

**84-03-BZ**

**CEQR #03-BSA-147Q**

APPLICANT - Sheldon Lobel, P.C., for Nissan Perla, Partner: N.P. Holdings, LLC, owner.

SUBJECT - Application October 24, 2003 - Under Z.R. §72-21 to permit the construction of a five-story and six-story with penthouse residential building (Use Group 2) in an R5 zoning district with a C1-2 overlay, which creates non-compliances with regard to floor area ratio, total height, perimeter wall height, lot area per dwelling unit, and rear yard equivalents, contrary to Z.R. §§23-22, 23-141, 23-631, and 23-533.

PREMISES AFFECTED - 35-40 30<sup>th</sup> Street, a/k/a 35-37 29<sup>th</sup> Street, between 35<sup>th</sup> and 36<sup>th</sup> Avenues, Block 341, Lot 6, Borough of Queens.

**COMMUNITY BOARD #1Q**

**APPEARANCES -**

For Applicant: Jordan Most.

**ACTION OF THE BOARD -** Application granted on condition.

**THE VOTE TO REOPEN HEARING -**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**THE VOTE TO CLOSE HEARING -**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**THE VOTE TO GRANT -**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION -**

WHEREAS, the decision of the Borough Commissioner, dated July 1, 2004, acting on Department of Buildings Application No. 401291641 reads:

“(1) Proposed plans are contrary to Z.R. §23-141 in that the proposed floor area ratio exceeds the maximum permitted floor area ratio of 1.65, (2) Proposed plans are contrary to Z.R. §23-631 in that the proposed total height and perimeter wall height is greater than permitted, (3) Proposed plans are contrary to Z.R. §23-222 in that the proposed lot area per dwelling unit is less than required, and (4) Proposed plans are contrary to Z.R. §23-533 in that the proposed rear yard equivalents are less than required;” and

WHEREAS, a public hearing was held on this application on October 21, 2003 after due notice by publication in *The City Record*, with continued hearings on October 28, 2003, December 23, 2003, February 24, 2004, March 23, 2004, April 27, 2004

and June 8, 2004, and then to July 13, 2004 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin; and

WHEREAS, both Community Board 1, Queens and the Queens Borough President recommend conditional approval of this application; and

WHEREAS, this is an application under Z.R. §72-21, to permit the construction of a five-story and six-story plus penthouse residential building (Use Group 2) in an R5 zoning district with a C1-2 overlay, which creates non-compliances with regard to floor area ratio, total height, perimeter wall height, lot area per dwelling unit, and rear yard equivalent, contrary to Z.R. §§23-22, 23-141, 23-631, and 23-533; and

WHEREAS, the subject lot fronts both 29<sup>th</sup> and 30<sup>th</sup> Street between 35<sup>th</sup> and 36<sup>th</sup> Avenues, in the Long Island City section of Queens, and is within an R5 zoning district, with a C1-2 commercial overlay covering approximately two-fifths of the site; and

WHEREAS, the premises is currently occupied with a two-story garage and auto repair facility, in use since the early 1990s; and

WHEREAS, the proposal contemplates the construction of a five-story and six-story plus penthouse residential building with sixty-two (62) residential units and sixty-six (66) on-site underground parking spaces; and

WHEREAS, due to the slope of the subject lot, the building will technically be five stories on the 30<sup>th</sup> Street frontage and six stories on the 29<sup>th</sup> Street frontage; and

WHEREAS, the proposal allows a floor area ratio (“FAR”) of 2.69 (1.65 is permitted); a total height of 54’ along 30<sup>th</sup> Street and 61’-9” along 29<sup>th</sup> Street (33 feet is permitted); a perimeter wall height of 45’ along 30<sup>th</sup> Street and 52’-9” along 29<sup>th</sup> Street (30 feet is permitted); a lot area per dwelling unit of 392 sq. ft. per dwelling unit (900 sq. ft. per dwelling unit is the permitted minimum); and a rear yard equivalent of 20 feet (30 feet is required); and

WHEREAS, earlier versions of the proposal contemplated a much larger building; specifically, the originally submitted building design had nine stories (plus penthouse), a 5.73 FAR, 122 residential units and a maximum height of 104 feet; and

WHEREAS, at the request of the Board, and after submission of various other proposals reflecting increasingly diminished bulk, the bulk of the proposed building was reduced to the levels of the current proposal; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardships in developing the subject lot in compliance with

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underlying district regulations: (1) the presence of underground and above ground storage tanks; (2) the Premises is currently benefited by a variance for certain non-residential uses; (3) the existing building is obsolete and not marketable in light of the dense residential development surrounding the Premises; (4) the incompatible nature between the property's current use (commercial use) and the surrounding uses (residential); (5) the change in grade of the property, descending from 30<sup>th</sup> Street to 29<sup>th</sup> Street; (6) the Premises is located on two narrow streets (29<sup>th</sup> Street and 30<sup>th</sup> Street which are 60 feet wide); and (7) the lot is split into two different zoning classifications (40% zoned in C1-2 and 60% zoned R5); and

WHEREAS, the Board finds that the following are unique physical conditions that, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformity with the current zoning regulations: (1) the presence of underground and above ground storage tanks, necessitating the need for two-level excavation and foundation work; (2) the change in grade of the property, descending from 30<sup>th</sup> Street to 29<sup>th</sup> Street; and (3) premium demolition costs associated with the unique features of the existing building; and

WHEREAS, the applicant states that the unique physical conditions lead to economic hardship in constructing a complying development, and has submitted a feasibility study in support of this claim; and

WHEREAS, opposition to the application submitted a letter contesting certain aspects of the feasibility study; and

WHEREAS, upon the Board's recommendation at the hearing on June 8, 2004, the applicant has submitted a supplemental statement in response to the opposition letter, which the Board finds sufficient and credible; and

WHEREAS, therefore, the Board finds that evidence in the record, including the submitted feasibility study, demonstrates that, because of the subject lot's unique physical conditions, developing the site with a complying development would not yield a reasonable return; and

WHEREAS, the applicant states that there are buildings of comparable height in the immediate vicinity of the subject lot; specifically, there is an adjacent six-story building, and three other six-story buildings less than 200 feet away; and

WHEREAS, the applicant submitted extensive materials regarding the surrounding as-built context as it relates to FAR, height, open space and lot coverage, including three separate neighborhood character maps; and

WHEREAS, additionally, the applicant submitted supplemental area photographs; and

WHEREAS, the applicant states that maps show that when examining FAR, building height, and open space ratio, the proposed building is more compliant with as-built conditions in the surrounding neighborhood than other existing structures; and

WHEREAS, the Board has reviewed the maps, photos, and applicant analysis, and finds them sufficient and credible; and

WHEREAS, the Board, based upon its review of these materials and upon its site visit, concludes that the proposed building's bulk and height is compatible with the built context of the surrounding neighborhood; and

WHEREAS, the applicant also claims that elimination of the existing non-conforming commercial/manufacturing use improves the surrounding area, which is predominantly residential and mixed-use residential/commercial; and

WHEREAS, the applicant has submitted revised plans that reflect the relocation of the vehicular ramp from the southwest side yard to beneath the proposed building on the northeast corner, which addresses an opposition concern that the ramp would negatively impact on adjacent residential use; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, due to the significant reductions of the proposed building's bulk, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the Board has conducted an environmental review of the proposed action and the Final Environmental Assessment Statement and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and

*Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit the construction of a five-story and six-story with penthouse residential building (Use Group 2) in an R5 zoning district with a C1-2 overlay, which creates non-compliances with regard to floor area

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ratio, total height, perimeter wall height, lot area per dwelling unit, and rear yard equivalents, contrary to Z.R. §§23-22, 23-141, 23-631, and 23-533; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 23, 2004"-(15) sheets; and *on further condition*:

THAT all lighting located on the subject property will be directed down and away from adjacent residential buildings;

THAT the proposed parking area shall not contain more than 66 parking spaces;

THAT the entire premises will be fully sprinklered;

THAT landscaping and fencing shall be provided and maintained in accordance with BSA approved plans;

THAT the above conditions shall be on the certificate of occupancy;

THAT all applicable fire safety measures as shown on the approved plans will be complied with;

THAT the layout of the parking area shall be as approved by the Department of Buildings;

THAT substantial construction be completed in accordance with Z.R. §72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2004.

**A true copy of resolution adopted by the Board of Standards and Appeals, July 13, 2004.  
Printed in Bulletin Nos. 28-30, Vol. 89.**

**Copies Sent  
To Applicant  
Fire Com'r.  
Borough Com'r.**