

134-06-BZ

CEQR #06-BSA-104Q

APPLICANT – Sheldon Lobel, P.C., for 241-15 Northern LLC, owner.

SUBJECT – Application June 26, 2006 – Variance under §72-21 to allow a five (5) story residential building containing 40 dwelling units and 63 accessory parking spaces. Proposal is contrary to regulations for use (§22-12), floor area and FAR (§23-141), open space (§23-141), front yard (§23-45), height and setback (§23-631) and maximum number of dwelling units (§23-22). R1-2 district.

PREMISES AFFECTED – 241-15 Northern Boulevard, northwest corner of the intersection between Northern Boulevard and Douglaston Parkway, Block 8092, Lot 39, Borough of Queens.

COMMUNITY BOARD # 11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, decision of the Queens Borough Commissioner, dated August 13, 2008, acting on Department of Buildings Application No. 402387449, reads in pertinent part:

- “1. The proposed multiple dwelling use is contrary to ZR § 22-12 and therefore requires approval of the Board of Standards and Appeals.
2. The proposed floor area and FAR exceeds that which is permitted under ZR § 23-141.
3. The proposed open space is less than the minimum required amount under ZR § 23-141.
4. The proposed front yard is less than the minimum required amount under ZR § 23-45.
5. The proposed multi-family residential building does not meet the sky exposure plane requirements under ZR § 23-631.
6. The proposed development exceeds the maximum number of dwelling units permitted on the zoning lot under ZR § 23-22.
7. The proposed rear yard on the interior lot portion is less than required under ZR § 23-47;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R1-2 zoning district, a proposed three-story residential building (Use Group 2) with 24 dwelling units and 34 accessory parking spaces (with an additional three reservoir spaces), which is not a permitted use, exceeds the maximum permitted FAR, does not provide the required open space, front yard, or rear

yard, encroaches into the sky exposure plane, and exceeds the maximum number of dwelling units, contrary to ZR §§ 22-12, 23-141, 23-45, 23-631, 23-47 and 23-22; and

WHEREAS, a public hearing was held on this application on September 18, 2007, after due notice by publication in the *City Record*, with continued hearings on February 5, 2008, April 15, 2008, June 17, 2008, and then to decision on September 9, 2008; and

WHEREAS, the hearing was closed and set for decision on July 29, 2008; the Board subsequently reopened the hearing to permit the applicant to submit revised plans and set the case for decision September 9, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommended disapproval of an earlier iteration of the proposal (for a five-story building), citing concerns about increased traffic and insufficient parking; and

WHEREAS, the Queens Borough President recommends disapproval of the application; and

WHEREAS, State Senator Frank Padavan and City Council Member Tony Avella recommend disapproval of the application; and

WHEREAS, certain neighbors, including representatives of the Douglaston/Little Neck Historical Society and the Douglaston Civic Association, provided testimony in opposition to the application, citing concerns about (1) whether the proposal represented the minimum variance, (2) the current use of the site as a parking lot, and (3) the potential traffic impact; and

WHEREAS, the Douglaston Civic Association was represented by counsel and provided submissions in opposition to the proposal, which include the following additional concerns (1) that the applicant had not met any of the required findings under ZR § 72-21, (2) the building’s bulk and number of dwelling units are not compatible with the neighborhood context, and (3) that there will be an increase in traffic generated by the building’s residents; and

WHEREAS, collectively, those opposed to the application are the “Opposition”; and

WHEREAS, the Opposition’s concerns are discussed in greater detail below; and

WHEREAS, the subject premises is located on the northwest corner of the intersection of Northern Boulevard and the Douglaston Parkway; and

WHEREAS, the site is irregularly-shaped, and has a total lot width of 95.11 feet and a total lot area of approximately 14,517 sq. ft.; and

WHEREAS, the site is occupied by a one-story vacant gasoline service station building, which will be

134-06-BZ
CEQR #06-BSA-104Q
demolished; and

WHEREAS, the Board notes that on February 15, 1961, under BSA Cal. No. 603-37-BZ, it granted a variance for the construction of a gasoline service station with accessory uses; the grant was subsequently amended and extended at various times; and

WHEREAS, additionally, on May 14, 1991, under BSA Cal. No. 216-88-BZ, the Board granted a variance to permit the construction of a three-story and penthouse office building (Use Group 6); construction pursuant to the variance never commenced and it expired on May 14, 1995; and

WHEREAS, the Board notes that the current proposal has gone through several iterations throughout the hearing process, including the following: (1) a five-story building with 39,950 sq. ft. of floor area (2.75 FAR), 40 dwelling units, a total height of 70'-6", and 63 parking spaces; (2) a four-story building with 31,960 sq. ft. of floor area (2.20 FAR), 32 dwelling units, a total height of 51'-6", and 34 parking spaces; and (3) a four-story building, with 30,520 sq. ft. of floor area (2.10 FAR), 28 dwelling units, a total height of 48'-6", and 34 parking spaces; and

WHEREAS, the Board directed the applicant to reduce the size of the building and the number of dwelling units so that the building was more compatible with adjacent uses and the neighborhood context and so that the proposal met the minimum variance finding; and

WHEREAS, the applicant provided revised financial analyses to correspond to the iterations; and

WHEREAS, the applicant now proposes a three-story Use Group 2 residential building (only Use Group 1 residential development is permitted); with a front wall and total height of 30'-0" (the maximum permitted front wall height is 25'-0" and the total height is based on compliance with the sky exposure plane); 22,860 sq. ft. of floor area (1.57 FAR) (the maximum permitted floor area is 7,258.5 sq. ft. and 0.50 FAR); front yards with depths of 15'-0" and 10'-1 1/2" (front yards with minimum depths of 20'-0" are required); open space of 52 percent (150 percent is the minimum permitted); 24 dwelling units (the maximum permitted number of dwelling units is two); 34 parking spaces (with an additional three reservoir spaces); and a rear yard of 15'-0" within the interior lot portion of the zoning lot (30'-0") is required.

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable zoning district regulations: (1) a sloping lot condition, (2) soil contamination due to a history of automotive related uses at the site, which requires remediation, and (3) the location on a heavily-trafficked intersection, in close proximity to multi-family dwellings; and

WHEREAS, as to the sloping condition, the applicant notes that there is a difference in the elevation

across the site from the northeast corner along Douglaston Parkway to the southwest corner at Northern Boulevard of approximately 15'-7"; and

WHEREAS, due to this condition, a masonry retaining wall is required along the Douglaston Parkway frontage at varying heights to secure the adjacent sidewalk; and

WHEREAS, the applicant represents that the slope creates a pit-like condition, which would not be compatible with a complying single-family home situated near Douglaston Parkway, that would result in first floor windows being nearly flush with the Douglaston Parkway street level; and

WHEREAS, further, the applicant notes that the corner lot is irregularly-shaped and that the provision of the two required front yards, open space and rear yard would result in the bulk of the building shifting away from the street frontage and towards the adjacent site, or would require additional height to accommodate the proposed floor area; and

WHEREAS, the proposed front wall and total height, including encroachment into the sky exposure plane, permits the construction of uniform floor plates and a more efficient design; and

WHEREAS, the applicant represents that a multiple-dwelling building, with the inclusion of a partial subsurface parking level is required to overcome the grade difference and elevate the first floor of the building above the street; and

WHEREAS, as to the soil contamination, the applicant represents that (1) the existence of a trench drain at the southwestern corner of the site will require significant remediation, (2) an area of oil-like stained soil has been identified at the site, and (3) there is a likely presence of underground storage tanks at the site; and

WHEREAS, the applicant submitted a study from an environmental consultant, which supports these assertions; and

WHEREAS, the applicant represents that due to these conditions, any development of the property will require environmental monitoring and remediation, which will increase the construction costs and contribute to the infeasibility of as-of-right development; and

WHEREAS, the Board notes that the prior approved use of the site for automotive uses dates back to before 1961 and predates the enactment of modern environmental protection regulations and safeguards for such uses; and

WHEREAS, as to the site's location at a heavily-trafficked intersection, the applicant notes that Northern Boulevard and Douglaston Parkway are both major thoroughfares, and the location is not marketable for single-family home development; and

WHEREAS, specifically, the applicant notes that nearby commercial uses and multi-dwelling buildings are more compatible because they do not require the

expectation of privacy associated with less dense residential development; and

WHEREAS, the applicant performed a survey along two miles of Northern Boulevard in the area, which revealed that there are no one-family or two-family homes directly on Northern Boulevard and only one such home was adjacent to it; and

WHEREAS, the applicant states that no other sites located on Northern Boulevard are similarly zoned R1-2 and surrounded by large non-conforming multi-family and commercial uses and located at a major intersection; and

WHEREAS, the Board does not accept that the site's location at a heavily trafficked intersection presents a unique condition that creates practical difficulty or unnecessary hardship; and

WHEREAS, however, the Board agrees that the site's topography and irregularity, the increased construction costs as a result of contamination, in combination with the site's location at a heavily trafficked intersection may result in one or two-family homes that are not marketable; and

WHEREAS, the applicant represents that the waivers are required to develop marketable dwelling units with sufficient floor area to overcome the premium construction costs, while maintaining a building with a bulk and density that is compatible with neighborhood character; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, initially, the applicant submitted financial analyses of: (1) an as-of-right scenario of two single-family homes with frontage on Northern Boulevard; (2) a 2.75 FAR multiple dwelling building with 40 units; (3) a lesser variance scenario of 0.60 FAR with ten dwelling units (reflecting an R3-2 scenario); and (4) a lesser variance scenario of 1.51 FAR (reflecting an R5 infill development); and

WHEREAS, the applicant concluded that the 2.75 FAR scenario was the only scenario of the four analyzed that provided a reasonable rate of return; and

WHEREAS, as noted, throughout the hearing process, the Board directed the applicant to reduce the degree of waivers requested to reflect the minimum variance; thus, the applicant modified the financial analysis to reflect different scenarios and to respond to the Board's concerns; and

WHEREAS, ultimately, the applicant provided a revised financial analysis which reflects that the proposed three-story (1.57 FAR) building with 24 dwelling units is the minimum capable of yielding a reasonable return; and

WHEREAS, thus, the applicant asserts that the use, number of dwelling units, FAR, height, front yard, rear yard, and open space waivers are required to overcome

the premium construction costs and to construct a marketable residential use, given the constraints of the site; and

WHEREAS, based upon its review of the applicant's financial studies, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area on both Northern Boulevard and Douglaston Parkway is characterized by a mix of uses and a significant number of multi-family residential buildings, including a six-story building directly adjacent to the site and four additional six-story and seven-story buildings within close proximity to the site, each of which is occupied by from 44 to 148 dwelling units; and

WHEREAS, the applicant notes that, in addition to having fewer dwelling units than the five afore-mentioned buildings, the proposed building also has less floor area and the second lowest FAR; and

WHEREAS, in response to the Opposition's concerns about (1) the building's bulk, number of dwelling units and compatibility with neighborhood character; and (2) the potential increase in traffic generated by the building's residents and at the Board's direction, the applicant reduced (i) the total height of the building from 70'-6" to 30'-0", (ii) reduced the number of proposed dwelling units from 40 to 24, and (iii) reduced the number of parking spaces from 63 to 37 (including three reservoir spaces); and

WHEREAS, at the Board's direction, the applicant also eliminated one of the parking levels and associated entrances to the site on Northern Boulevard to address concerns about traffic circulation and safety; and

WHEREAS, the applicant notes that 34 of the parking spaces will be attended and three will be reservoir spaces; the single entrance to the parking level will be approximately 140 feet from the intersection of Northern Boulevard and Douglaston Parkway; and

WHEREAS, the Board has determined that the reduced bulk (at 1.57 FAR), number of dwelling units and parking spaces reflects a design that is compatible with neighborhood character and is consistent with an R5 infill development, which permits an FAR of up to 1.65; and

WHEREAS, specifically, the final iteration provides for a front wall and total building height of 30 feet (34 feet including the parapet wall), which reflects a front wall height only five feet to nine feet in excess of the maximum permitted, and a total height that would be permitted but

134-06-BZ

CEQR #06-BSA-104Q

for the encroachment into the sky exposure plane; and

WHEREAS, the Board notes that the applicant will provide more than one parking space for each dwelling unit; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood, nor impair the use or development of adjacent properties, nor 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, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil condition to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which predates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that additional floor area, height, dwelling units and parking spaces were required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed degree of FAR, height and dwelling count waivers were needed to make the building feasible; and

WHEREAS, as noted, the applicant revised the application to reduce the degree of floor area and FAR waivers, and to reflect the 1.57 FAR distributed appropriately on the site; and

WHEREAS, the Board notes that the applicant has significantly reduced the number of dwelling units from the 40 initially proposed to 24, reduced the total height from 70'-6" to 30'-0", and reduced the number of parking spaces from 63 to 37 (including three reservoir spaces); and

WHEREAS, the Board notes that the applicant also initially proposed two parking levels with two entrances; and

WHEREAS, the Opposition claims that the applicant has failed to submit evidence or advance any legal arguments as to why the two prior variances granted in 1938 (gasoline service station) and 1991 (three-story and penthouse office building) are no longer feasible as a minimum variance; and

WHEREAS, the applicant states that neither the previous grant for a gasoline service station, nor that for a three-story office building represent either a lesser development scenario or a minimum variance scenario, since each would be a more intense use of the property than the proposed development; and

WHEREAS, the Board agrees that the applicant has analyzed several lesser development scenarios in order to meet the minimum variance finding and that the two

previous grants would analyze commercial developments that typically have greater impacts than multiple dwellings in residential neighborhoods; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Opposition raised the following supplemental concerns: (1) that the number of Notices of Liability issued by the NYC Department of Transportation for driving infractions at the intersection reflects the hazardous nature of the intersection; (2) the economic analysis does not reflect that as-of-right development is infeasible, (3) the building will produce a significant traffic impact, (4) the site is not unique and the development is not compatible with neighborhood character, (5) single-family homes are located within a 1100 foot radii of the site, and (6) the contamination of the site constitutes a self-created hardship; and

WHEREAS, in response, the applicant states that: (1) violation information is inconclusive as there is no context for the number of infractions cited or their nature and no evidence substantiates the claim that the intersection is most dangerous; (2) the economic analysis reflects a loss for the as-of-right development; (3) the environmental analysis reflects that even the initial proposal for 40 dwelling units and 63 parking spaces would have no adverse impact on traffic conditions; (4) an aggregate of factors may create uniqueness (see Douglaston Civic Association v. Klein, 67 A.D.2d 54 (2d Dep't 1979), aff'd 51 N.Y.2d 963 (1980)) and the site's uniqueness was previously recognized in two prior variance cases, (5) the nearest single-family homes are located on interior neighborhood streets which are not comparable to the subject site's location on a more heavily trafficked thoroughfare, and (7) as noted, the Board acknowledges that the contamination of the site predates modern environmental regulations and is not deemed to be self-created; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Part 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA104Q, dated June 26, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and

134-06-BZ

CEQR #06-BSA-104Q

Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's Bureau of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a January, 2006 Environmental Assessment Statement and (2) an November, 2006 Phase I Environmental Site Assessment report; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a Restrictive Declaration was executed on February 18, 2007 and recorded on March 29, 2007 for the subject property to address hazardous materials concerns; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R1-2 zoning district, a proposed three-story residential building with 24 dwelling units and 34 accessory parking spaces (with three additional reservoir spaces), which is not a permitted use, exceeds the maximum permitted FAR, does not provide the required open space, front yard, or rear yard, encroaches into the sky exposure plane, and exceeds the maximum number of dwelling units, contrary to ZR §§ 22-12, 23-141, 23-45, 23-631, 23-47 and 23-22, *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 July 15, 2008"—six (6) sheets and "Received September 3, 2008"—three (3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of three stories, a maximum of 24 dwelling units, a total height and streetwall height of 30'-0", a floor area of 22,860 sq. ft. (1.57 FAR), front yards with minimum depths of 15'-0" and 10'-1 1/2", a rear

yard depth of 15'-0", a minimum open space of 52 percent, and 34 parking spaces (with three reservoir spaces), as illustrated on the BSA-approved plans;

THAT the parking spaces shall be limited to accessory parking for the proposed residential development;

THAT the parking layout shall be as approved by DOB;

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;

THAT construction shall be substantially completed in accordance with the requirements of ZR § 72-23; 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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 9, 2008.

A true copy of resolution adopted by the Board of Standards and Appeals, September 9, 2008.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.