

**165-10-BZ thru 172-10-BZ**

**CEQR #10-DCP-029K**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (§23-47) and minimum distance between windows and lot lines (§23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1304, 1310, 1316, 1322, 1328, 1334, 1362, 1368 37<sup>th</sup> Street, South side of 37<sup>th</sup> Street between 12<sup>th</sup> Avenue and 14<sup>th</sup> Avenue, Block 5300, Lots 9, 109, 110, 111, 112, 113, 115, 116, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Todd Dale.

**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, the decisions of the Brooklyn Borough Commissioner, dated December 1, 2010 and January 10, 2011, acting on Department of Buildings Application Nos. 320190280, 320190119, 320190093, 320190100, 320190299, 320190397, 320190306, and 320190315, read, in pertinent part:

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required rear yard (23-47 ZR).

[and/or]

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required distance between a legally required window and a lot line (23-861 ZR); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of eight four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to ZR § 23-861; and four of the eight buildings also do not provide the required rear yard, contrary to ZR § 23-47; and

WHEREAS, a companion variance application, filed under BSA Cal. Nos. 156 through 164-10-BZ, for Block 5295, Lots 4, 104-108, 111-113 was heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on March 1, 2011 after due notice by publication in *The City Record*, with a continued hearing on March 29, 2011, and then to decision on May 3, 2011; and

WHEREAS, this application is brought on behalf

the City of New York and will be developed under the auspices of the New York City Department of Housing Preservation and Development (HPD) (the “applicant”), which will restrict the use to affordable housing under HPD’s New Foundations Program; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

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

WHEREAS, the site is located on the south side of 37<sup>th</sup> Street, between 13<sup>th</sup> Avenue and 14<sup>th</sup> Avenue, and the applicant proposed to subdivide the existing lot into six individual zoning lots; five will be developed with a total of eight four-family buildings (eight tax lots) and one lot will be developed with off-street parking facilities accessory to existing community facilities located behind the site on 38<sup>th</sup> Street and not included in the proposed residential request; and

WHEREAS, the site has a width of 604.19 ft., a depth of 50 ft., and a lot area of 31,358.5 sq. ft., and is currently within an (MX) M1-2/R6A zoning district (the site was rezoned as part of the Culver El rezoning on October 27, 2010 from an M2-1 zoning district); and

WHEREAS, the site is located within a former railroad right-of-way known as the Culver El, which was formerly occupied by an elevated railroad line, which was demolished in 1985, and a ground level railroad; and

WHEREAS, the applicant states that because the site is located within a former railroad right-of-way, it was required to seek a special approval from the City Planning Commission pursuant to ZR § 74-681, which it has done; and

WHEREAS, additionally, the applicant states that HPD obtained a designation of an Urban Development Action Area Project (UDAAP) and Disposition of city-owned property to permit the disposition of the site and to permit development of the proposed affordable housing; and

WHEREAS, the applicant proposes to construct a total of 17 four-story four-family buildings and a total of 68 affordable housing units across the subject block and the companion Block 5295;

WHEREAS, of the eight subject buildings, each of the three single buildings will have 6,453 sq. ft. of floor area and each of the three double buildings will have between 12,746 sq. ft. and 14,168 sq. ft.; all non-corner buildings propose a rear yard with a depth of 10 feet and one side yard with a width of 9’-6”;

WHEREAS, all buildings include off-street parking for 50 percent of the proposed residential units; and

WHEREAS, the buildings will have a complying wall height of 40’-0”, and a total height of 47’-9”, at the peak of the roof; and

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WHEREAS, the applicant proposes to provide a rear yard/minimum distance to the rear lot line and open areas of between 9'-6" and 15'-8" in between the buildings and rear yards with depths/distance from required windows to lot line of 10'-0" (rear yards and distance from required window to lot line with a minimum depth of 30'-0" are required); and

WHEREAS, the applicant notes that although the buildings do not provide the minimum distance requirement, the open areas exceed the side yards required pursuant to ZR § 23-561; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the history of the site as a railroad right-of-way; (2) the shallow depth; and (3) the programmatic needs of HPD's housing initiative; and

WHEREAS, as to the history of the site, the applicant states that the site was occupied by the elevated railroad line (BMT Culver Shuttle transit line) and the ground level South Brooklyn Railroad, both of which stopped service in the 1970's; the elevated train infrastructure occupied the site until its demolition in 1985; and

WHEREAS, the applicant states that after the Metropolitan Transit Authority surrendered its interest in the site, the City has leased and/or sold portions of the site for uses including affordable residential development and accessory parking for surrounding institutions and businesses; and

WHEREAS, the applicant states that in recent years, the City announced an initiative to stimulate development of the site with affordable housing, which is in great demand in the surrounding Borough Park neighborhood; and

WHEREAS, the applicant notes that the rezoning of the subject site and portions of the surrounding area and other associated actions are a culmination of several years of effort from the Department of City Planning, HPD, elected officials and local organizations to make a productive use of the abandoned railroad right-of way; and

WHEREAS, as to the site's depth, the applicant notes that the site's unusual length and depth of 50 feet may have been sufficient for the railroad which did not require a standard block depth for its infrastructure, but that nearly all sites in the area have depths ranging from 80 feet to 150 feet, with the majority having depths of 80 to 100 feet; and

WHEREAS, the applicant proposes to provide a rear yard and a distance from wall to lot line with a depth of 10 feet along the rear lot line in order to provide a building depth of 40 feet and open areas with widths of between 9'-6" and 15'-8" between the buildings and side lot lines; and

WHEREAS, the applicant notes that, although the buildings do not meet the minimum distance between

required window and lot line requirement of 30 feet, the proposed open area exceeds the side yards (0 ft. or a minimum of 8 ft., if provided) required pursuant to ZR § 23-651; and

WHEREAS, the applicant submitted as-of-right plans which reflect that in order to construct complying buildings which satisfy HPD's programmatic need of accommodating the maximum available floor area, the buildings would be six stories in height with depths of only 20 feet, which would result in inefficient floorplates and buildings that would not satisfy HPD's needs and also not be able to accommodate off-street parking; and

WHEREAS, further, the applicant notes that the as-of-right buildings with interior space required for required exits, elevators, and circulation space would render the buildings extraordinarily expensive and impractical to construct; and

WHEREAS, the applicant also notes that ZR § 23-52 (Special Provisions for Shallow Interior Lots) provides that on a lot that is 50 ft. in depth, a rear yard of ten feet is permitted; and

WHEREAS, however, the applicant notes that as a result of the subject site being subdivided into multiple zoning lots (as required by HPD's programmatic needs), after December 15, 1961, the site does not meet the condition precedent required for the rear yard reduction; and

WHEREAS, the applicant notes that the post-1961 creation of the individual zoning lots is not the cause for the shallow lot condition, which is associated with the unique history and usage of the subject site as a railroad right-of-way that has been abandoned; and

WHEREAS, the applicant asserts that maintaining the site as a single zoning lot would result in the requirement to comply with ZR § 23-711 for providing a minimum distance of between 30 and 50 feet between buildings which would drastically limit the amount of development on the site; and

WHEREAS, additionally, the applicant notes that the minimum distance between required window and lot line regulations would not apply if the proposed buildings were limited to a maximum of three stories – three units and 32 ft. in height; and

WHEREAS, the applicant asserts that such a height limit would result in a loss of 25 percent of the development and not allow HPD to satisfy its programmatic need and it would still be contrary to the rear yard requirement of 30 feet; and

WHEREAS, the applicant represents that the as-of-right plan would also require that the lowest floor would be a basement, not at grade, and that it would require installation of an ADA-accessible entry ramp at the basement floor level, requiring that the first floor be set back; and

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WHEREAS, the applicant notes that the proposed design reflects one unit per floor (which is well within the density limitations) and, thus, each unit will include frontage on 37<sup>th</sup> Street, which has a width of 60 feet, and there will not be any units that only have exposure to the rear yard; and

WHEREAS, as to the uniqueness of the site conditions, the applicant notes that the railroad right-of-way has affected only a narrow strip along five city blocks in the area and that the two sites seeking variances are the last that have not been the subject of other discretionary actions to allow for their development; and

WHEREAS, as to HPD's programmatic need, the applicant states that the Department of City Planning and HPD have executed a series of land use actions to facilitate the development of the subject site with a series of homes under HPD's affordable housing initiatives and that the proposal was subject to extensive review by HPD's Division of Architecture, Construction, and Engineering to insure compliance with HPD's standards as to habitability and site plan design; and

WHEREAS, accordingly, the applicant represents that the proposed site plan meets HPD's standards for buildings of sufficient size and density that are feasible to construct; and

WHEREAS, the applicant represents that the proposed design complies with HPD's programmatic and quality of life requirements; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of HPD's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the site is currently owned by the City and proposed for development with affordable housing by a non-profit entity to be selected by HPD in furtherance of its mission; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the uses adjacent to the proposed rear yards are a mix of manufacturing, community facility, and residential uses as well as vacant sites; and

WHEREAS, the applicant asserts that the only residential uses abutting the portions of the site associated with the waivers, are located adjacent to proposed corner lots for which no rear yard waivers are sought; and

WHEREAS, the applicant notes that the distance between these existing residential/mixed use buildings and the proposed dwelling units is ten feet which is greater than the required side yards; and

WHEREAS, the applicant states that the proposed development has been reviewed by the Department of

City Planning, which was the applicant for the rezoning, text change, and special permits, as well as by HPD, which is the applicant for the UDAAP and will select the non-profit developer for the project, pursuant to which the buildings will be constructed; and

WHEREAS, the applicant cites to the City's Uniform Land Use Review Procedure (ULURP) application, which says that "the project area consists of underutilized property that tends to impair or arrest the sound development of the surrounding community, with or without tangible physical blight. Incentives are needed in order to induce the correction of these substandard, insanitary and blighting conditions. The project activities would protect and promote health and safety and would encourage sound growth and development;" and

WHEREAS, the applicant also cites to the Department of City Planning's special permit application for the construction within the railroad right-of-way in which it states that (1) the streets providing access to the site are adequate to handle traffic generated from the proposed use of the site; (2) the bulk and density do not affect the character of the surrounding area; and (3) the proposed and existing uses do not adversely affect each other; and

WHEREAS, based upon the above, 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, but is due to the unique site conditions including the site's former use as a railroad right-of-way; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except required rear yards and minimum distance between required windows and lot lines is the minimum necessary to afford relief; and

WHEREAS, thus, 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 a Type I action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Department of City Planning, as Lead Agency, 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. 10DCP029K, dated May 10, 2010; 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

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Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals adopts the CEQR determination of the Department of City Planning and makes the required findings under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of eight four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to ZR § 23-861; and four of the eight buildings also do not provide the required rear yard, contrary to ZR § 23-47; *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 “April 29, 2011”– (15) sheets; and *on further condition*:

THAT any change in ownership, operator, or control shall require the prior approval of the Board;

THAT the above condition shall be listed on the certificate of occupancy;

THAT the parameters of the proposed buildings shall be as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed buildings shall be subject to DOB review and approval;

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 significant construction shall proceed in accordance with ZR § 72-23;

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, May 3, 2011.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 3, 2011.  
Printed in Bulletin Nos. 17-19, Vol. 96.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**