

258-14-BZ
CEQR #15-BSA-088K

APPLICANT – Sheldon Lobel, P.C., for Henry Atlantic Partners LLC, owner.

SUBJECT – Application October 16, 2014 – Variance (§72-21) to permit the construction of a 4-story mixed-use building of an existing with commercial use on the first floor in a (R6) zoning district located in Cobble Hill Historic District.

PREMISES AFFECTED – 112 Atlantic Avenue, southeast corner of the intersection formed by Atlantic Avenue and Henry Street, Block 285, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 9, 2014, acting on DOB Application No. 320626505, reads, in pertinent part:

ZR 22-12: The proposed commercial use is not permitted in the residence district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R6 zoning district, within a Limited Height District, within the Cobble Hill Historic District, commercial use on the first floor of a proposed four-story, mixed-use building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on April 21, 2015, after due notice by publication in the *City Record*, with continued hearings on June 23, 2015 and September 1, 2015, and then to decision on September 18, 2015; and

WHEREAS, Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of the intersection at Atlantic Avenue and Henry Street, within an R6 zoning district, within a Limited Height District, within the Cobble Hill Historic District; and

WHEREAS, the site has 97 feet of frontage along Atlantic Avenue and 80 feet of frontage along Henry Street, and approximately 7,785 sq. ft. in lot area; and

WHEREAS, the site is occupied by a one-story Use Group (“UG”) 16 gasoline service station and repair shop (a use which is permitted pursuant to a pre-1961 variance), which contains approximately 1,590 sq. ft. of floor area, a pump island, an auto repair shop with three service bays, and four petroleum storage tanks; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 22, 1960 when, under BSA Cal. No. 741-59-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, lubricatorium, minor auto repairs, car wash,

office, sales and storage and parking of motor vehicles for a term of 15 years; and

WHEREAS, the grant under BSA Cal. No. 741-59-BZ was amended, and the term was extended at various times; and

WHEREAS, On February 8, 2000, under BSA Cal. No. 195-99-BZ, the Board granted an application under ZR § 11-411 to re-establish the expired variance granted under BSA Cal. No. 741-59-BZ, and on January 12, 2010, extended the term of the variance granted under BSA Cal. No. 195-99-BZ for a period of ten years, to expire on November 10, 2019; and

WHEREAS, the applicant proposes to demolish the existing service station and repair shop and construct a four-story, mixed-use building, with approximately 6,000 sq. ft. of ground floor retail floor area with 2,100 sq. ft. of accessory floor space in the cellar, and approximately 16,500 sq. ft. of residential floor area; and

WHEREAS, because the proposed retail space is not permitted in the subject R6 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) environmental contamination resulting from the longstanding operation of a gasoline service station and automotive repair shop which results in excessive premium construction costs; (2) the absence of the commercial overlay which characterizes frontage along the major avenue on which the site is located, which puts the property at a relative disadvantage to other properties in the surrounding area; and (3) the site’s dramatically underbuilt status, which puts it at a disadvantage relative to the other overbuilt and non-complying buildings in its immediate vicinity; and

WHEREAS, as to the environmental contamination at the site, the applicant states that its consultants undertook soil borings which revealed extensive gasoline related constituents in the vicinity of the trench drain at the western edge of the site, and notes that its consultants were unable to take borings east of this point because of additional subsurface storage tanks likely to have further contaminated the site; and

WHEREAS, the applicant states that in addition to elevated levels of VOCs and solvents, all of which must be removed from the site but which are likely attributed to the character of the fill present on the site, lead was identified in the soil at the site at significantly elevated levels sufficient to constitute a hazardous waste, which is not characteristic of typical fill; and

WHEREAS, the applicant states that in addition to the lead-based hazardous waste at the site, excessive levels of Tetrachloroethene, or “Perc,” were identified as the site; and

WHEREAS, the applicant notes that Atlantic Avenue is, in the area surrounding the site, benefitted by a commercial overlay, but that the site is located on one of two blocks on the south side of the street which is not

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within such commercial overlay and, therefore, the site is uniquely burdened, relative to the surrounding area, in that the ground floor retail which characterizes the neighborhood is not permitted as-of-right; and

WHEREAS, the applicant argues that the prohibition on a retail use at the site amidst blocks of frontage characterized by such use on the ground floor, contributes to the site's economic hardship, as the site is located within a neighborhood that is commercial in nature, but unable to benefit from commercial rent; and

WHEREAS, lastly, the applicant argues that the site is dramatically underbuilt, with an FAR of .2, and is the second most underbuilt property within 600 feet of the site (the first being an accessory parking garage adjacent to a larger property which is in common ownership with the underbuilt garage); and

WHEREAS, the applicant submits that the fact that the site is dramatically underbuilt, relatively disadvantaged in that it was excluded from the commercial overlay which characterizes Atlantic Avenue, and severely contaminated, in the aggregate, constitute a hardship; and

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

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant provided a financial analysis for (1) a four-story plus cellar residential building with the maximum allowable residential zoning floor area and 10 cellar-level parking spaces with an automated parking system (the "As-of-Right Residential Plan"); (2) a five-story plus cellar mixed-use building with a two-story community facility (ambulatory diagnostic care) base and three upper residential floors (the "As-of-Right Community Facility Plan") and (3) the proposal; and

WHEREAS, the applicant represents that only the proposal would provide a reasonable return; and

WHEREAS, specifically, the applicant argues that with respect to the As-of-Right Residential Plan, the parking income along with potential residential condominium sales is not sufficient to produce an economically viable project because ground floor residential use is an anomaly along the Atlantic Avenue frontage and it presents a discounted valuation when located on the first floor of the busy commercial thoroughfare; and

WHEREAS, the applicant further argues that such discounted residential ground floor exacerbates the economic harm caused by the site's environmental conditions, making a reasonable return unrealistic; and

WHEREAS, the applicant also argues that the As-of-Right Community Facility Plan is inappropriate in this location; and

WHEREAS, specifically, the applicant represents that: (1) the former locally-oriented medical facility known as Long Island College Hospital recently closed, dramatically reducing demand for nearby spin-off medical space; (2) given the Long Island College Hospital closure there is a lower absorption rate for newly constructed medical facilities in the neighborhood; (3) rents for community facility are much lower than retail rents and therefore do not sustain the proposed new construction; (4) designing two floors of community facility space within the proposed building, which is subject to a 50-foot height limit, reduces ceiling heights throughout the residential portion of the building, thereby significantly reducing the economic return from the sale of the residential units therein; (5) the two-floor community facility use creates the need for dual and separate cores, creating space and cost inefficiencies; and (6) if the community facility tenant at the site used it as an urgent care facility, such use would have a significant detrimental impact on the value of the residential units on the upper floors of the proposed building; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the site is located on the southeast corner lot of Atlantic Avenue and Henry Street, an area with a historic character defined by brownstone buildings and its mixed-use character; the lack of curb cuts along Atlantic Avenue makes it a pedestrian-friendly neighborhood and the proliferation of ground-floor retail and eating and drinking establishments greatly enhance the neighborhood's appeal; and

WHEREAS, the applicant also notes that the existing gasoline service station and repair shop is out of character with the neighborhood and that its location on a corner lot makes it a danger to pedestrians in that approximately 75% of the site's sidewalk frontage – all corner – is interrupted by three curb cuts;

WHEREAS, the applicant also argues that replacing the legal non-conforming gasoline service station with a residential and commercial mixed-use building would bring the site into greater compliance with the applicable zoning regulations; and

WHEREAS, on December 16, 2014, the New York City Landmarks Preservation Commission (the "LPC") issued Certificate of Appropriateness No. 16-6016 (expires December 16, 2020) for the proposed building; and

WHEREAS, the Certificate of Appropriateness states that:

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[w]ith regard to this proposal, the Commission found that the existing gas station is not a building for which the Cobble Hill Historic District was designated and its demolition will not diminish the special architectural or historic character of the historic district; that the facades of the proposed new building will maintain the street wall and are in keeping with the scale of buildings found in this district and on this block; 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; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site, and notes that no changes to the bulk of the building are proposed; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; 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 a Type I action pursuant to 6 NYCRR, Part 617.4; 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. 15-BSA-088K, dated February 16, 2015; 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 Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials; and

A true copy of resolution adopted by the Board of Standards and Appeals, September 18, 2015.

Printed in Bulletin No. 39, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

WHEREAS, DEP reviewed and accepted the June 2015 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project;

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 Type I 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, within an R6 zoning district, within a Limited Height District, within the Cobble Hill Historic District, commercial use on the first floor of a proposed four-story, mixed-use building with accessory floor space in the cellar, contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 30, 2015"- twelve (12) sheets; and *on further condition*:

THAT substantial construction will be completed in accordance with ZR § 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);

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

THAT all construction shall be in conformance with the LPC Certificate of Appropriateness No. 16-0016, dated December 16, 2014;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided DOB with DEP's approval of the Remedial Closure Report;

THAT DOB 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 18, 2015.

