

2016-4171-BZ

MEETING OF: April 9, 2019
CALENDAR NO.: 2016-4171-BZ
PREMISES: 823 Kent Avenue, Brooklyn
Block 1898, Lot 23
BIN No. 3322334

ACTION OF BOARD — Application granted on condition.

THE VOTE TO GRANT —

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown,
Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION —

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 18, 2016, acting on New Building Application No. 321131422, reads in pertinent part:

“Proposed new 3-family residential building . . . is not allowed pursuant to ZR 42-10”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an M1-1 zoning district, the development of a four-story residential building that does not comply with zoning regulations for use, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 21, 2017, after due notice by publication in *The City Record*, with continued hearings on August 21, 2018, September 27, 2018, December 11, 2018, March 5, 2019, and then to decision on April 9, 2019; and

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

WHEREAS, Community Board 3, Brooklyn, recommends approval of this application of this application; and

WHEREAS, the subject site is located on the east side of Kent Avenue, between Myrtle Avenue and Park Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 25 feet of frontage along Kent Avenue, 206 feet of depth, 5,154 square feet of lot area and is occupied by a two-story residential building at the rear of the site with 1,276 square feet of floor area (0.25 FAR); and

WHEREAS, the applicant proposes to develop a four-story, including penthouse, residential building with a total of 3,636 square feet of floor area (0.71 FAR), including 1,105 square feet of floor area at the first three floors and 321 square feet of floor area for the fourth-floor penthouse—totaling 4,912 square feet of residential floor area (0.95 FAR) at the subject site; and

WHEREAS, the applicant submits that, at the subject site, residential use is not allowed under ZR § 42-10; and

WHEREAS, the applicant states that the following are unique physical conditions about the subject site that create practical difficulties in developing the site in strict conformance with applicable zoning regulations: the subject site's narrowness and its history of development that has resulted in its current configuration with a small, non-conforming residential building to the rear; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding that no other sites have a comparable depth to width ratio with as-of-right uses; and

WHEREAS, the applicant notes that, historically, the front of the subject site was occupied by a residential building that was demolished while under the City's ownership, resulting in the subject site's current configuration; and

WHEREAS, the applicant states that the current configuration of the subject site presents a disruption of the uniform street wall on the subject block, a condition present at only one other lot in the vicinity; and

WHEREAS, the applicant notes that the subject site presents physical constraints for an as-of-right development occupied by conforming commercial or manufacturing uses with a total of 3,878 square feet of floor area (0.75 FAR); and

WHEREAS, more particularly, the applicant notes that an as-of-right development would be confined to the front of the subject site and could only cover a portion of the subject site's street frontage because of the presence of the existing residential building at the rear of the subject site and further exacerbated by the subject site's narrowness; and

WHEREAS, the applicant also notes that the 25-foot width of the subject site is too narrow to accommodate a building with a loading dock or adequately sized floorplates to support a commercial or manufacturing use; and

WHEREAS, the applicant accordingly submits that an as-of-right development would consist of a three-story, with cellar, warehouse with a 20-foot-tall first floor (to provide access to the rear of the subject site) and a cantilevered second floor (to maximize its floorplate) and that, although there are a number of properties in the area with both residential and commercial or manufacturing uses, none of them are located at the middle of a block with the as-of-right use directly in front of the residential use; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant submits that the above unique physical conditions eliminate any reasonable possibility that strictly complying with applicable regulations would enable a reasonable return; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that an as-of-right development—consisting of a three-story warehouse and office building with the existing residential building to remain at the rear of the subject site—would result in a substantial loss on investment but that the proposed development of a four-story, including penthouse, residential building with the existing residential building to remain at the rear of the subject site would yield a modest return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant states that the proposed residential development will not alter the character of the surrounding neighborhood or district; and

WHEREAS, in support of this contention, the applicant submitted evidence that the surrounding area contains a vibrant mix of uses—including non-conforming residences and manufacturing uses—and that only a few lots on the subject block are developed with conforming commercial, manufacturing or community-facility uses; and

WHEREAS, the applicant also submits that, with a building height of 38’-6”, the proposed residential development is consistent with the surrounding area, and the applicant provided a photographic streetscape montage indicating that buildings in the vicinity range in height from 16 feet to 86 feet, that the proposed height is consistent with adjacent residential buildings, that the proposed building will improve street wall continuity on the subject block and that the proposed floor area, which is below the maximum allowed for community facilities as of right, is consistent with the surrounding area; and

WHEREAS, by letter dated October 15, 2018, the Fire Department states that it has no objection to this application provided that the existing two-story frame building shall be fully sprinklered; that any future structures constructed on the remaining portion of the subject site shall be fully sprinklered; that the 8-foot side yard shall be maintained clear at all times; that there shall be no parking at any time within the length of the side yard; that a separate address sign shall be installed on or near the front lot line indicating the address of the rear residential building; and that the rear residential building shall install a security system connected to a company that provides continuous supervision to monitor heat, smoke, carbon monoxide and sprinkler flow; and

WHEREAS, in response to questions from the Board at hearing, the applicant addressed that the height of the proposed development is consistent with adjacent residences and the surrounding area, clarified that the roof terrace will only be accessible to the third-floor with penthouse duplex apartment and submitted a draft restrictive declaration to address the Fire Department’s concerns regarding access to the rear of the subject site; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, in response to questions from the Board, the applicant submitted evidence that, although the subject site and adjacent Tax Lot 22 were held in common ownership by the City as well a housing development fund corporation at one time, the safety-mandated demolition of the former residential building at the front of the subject site occurred during the period when the City owned the subject site, and the above unique physical conditions that cause practical difficulties or unnecessary hardship were not caused by the current owner or any predecessor in title; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; 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 CEQR No. 16BSA109K, dated March 22, 2019; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated November 13, 2017, the New York City Landmarks Preservation Commission represents that the proposed project would not result in any adverse impacts with respect to archaeological or architectural resources; and

WHEREAS, by letter dated February 12, 2019, the New York City Department of Environmental Protection (“DEP”) states that the January 2019 Remedial Action Plan (“RAP”) and the January 2019 Construction Health and Safety Plan are acceptable on condition that proper handling, transportation and disposal of excavated materials from the site shall be conducted in accordance with applicable New York State Department of Environmental Conservation (“NYSDEC”) regulations; that the proposed vapor barrier system shall be used unless an amendment to the January 2019 RAP is approved by DEP; and that at the completion of the project, a professional engineer (P.E.) certified Remedial Closure Report shall be submitted to DEP for review and approval for the proposed project, which shall indicate that all remedial requirements

have been properly implemented (that is, proper transportation and disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; proof of installation of engineering control system; and two feet of DEP approved certified clean fill and top soil requirement in any landscaped or grass-covered areas not capped with concrete or asphalt, etc.); and

WHEREAS, by letter dated March 12, 2019, DEP states that the proposed project would not result in any potential for significant adverse impacts with regard to air quality and that the proposed project would not result in any potential for significant adverse impacts with regard to noise on condition that a composite window-wall noise attenuation of 28 dBA shall be required for all proposed building facades and that an alternate means of ventilation shall be required and shall be incorporated into the building design and construction; 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; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Negative Declaration 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 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an M1-1 zoning district, the development of a four-story residential building that does not comply with zoning regulations for use, contrary to ZR § 42-10; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received April 9, 2019”-Seventeen (17) sheets; and *on further condition*:

THAT a restrictive declaration shall be recorded against the property prior to the issuance of any building permit substantially conforming to the form and substance of the following:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the “Declaration”), dated this day of , 2019, is entered into by JISEL CRUZ (the “Declarant”), who resides at 823 Kent Avenue, Brooklyn, New York 11205;

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Brooklyn, being known and designated as Block 1898, Lot 23 on the Tax Map of the City of New York, and more particularly described in Exhibit A annexed hereto and made a part hereof (the “Premises”); and

WHEREAS, the Premises is currently improved with a 2-story single-family frame dwelling at the rear of the tax lot (the “Existing Building”);

WHEREAS, the Declarant has requested by application assigned BSA Calendar Number 2016-4171-BZ, that the New York City Board of Standards and Appeals (the “Board”) grant a variance application pursuant to Section 72-21 of the New York City Zoning Resolution (“ZR”) to permit the development of a new three-story residential building (the “Proposed Building”) at the Premises contrary to use regulations (the “Variance Application”); and

WHEREAS, the Fire Department of the City of New York (the “FDNY”) issued a Letter of No Further Objection dated October 15, 2018 annexed hereto as Exhibit B, noting that the FDNY has no further objections to the Variance Application contingent on the following requirements and conditions: (1) the existing 2-story frame building must be fully sprinklered; (2) any future structures on the remaining portion of the lot must be fully sprinklered, (3) the 8-foot side yard located to the west of the Proposed Building (the “Driveway”) shall be maintained clear at all times and that there shall be no parking anytime within the length of the side yard; (4) a separate address sign shall be installed on or near the front lot line indicating the address of the rear building; and (5) the rear building will install a security system that connects to a company that provides continuous supervision that will monitor heat, smoke, carbon monoxide, and sprinkler flow; and

WHEREAS, the FDNY further requests that a “No Parking Anytime” sign be installed in the side yard permanently, before, during, and after construction; and

WHEREAS, the Board held a public hearing on December 11, 2018 and at that hearing, the Board requested that the FDNY conditions listed in the above-referenced October 15, 2018 letter be recorded in a Restrictive Declaration against the Premises; and

WHEREAS, the Board further requires that the Declarant install a domestic waterline sourced sprinkler system in the Existing Building prior to construction of the Proposed Building;

WHEREAS, the Board and FDNY instructed the Declarant to record the proposed construction safety measures, as illustrated in the diagram as annexed hereto as Exhibit C; and

WHEREAS, the Board and FDNY noted that the Driveway must be gated and used exclusively as a means of egress of the Existing Building; and

WHEREAS, the Board requires Declarant to execute and record in the Office of the City Register of the City of New York this restrictive declaration prior to obtaining building permits for the Premises.

NOW THEREFORE, in consideration of the Board's approval of the Variance Application, the Declarant hereby declares that the Declarant and its successors and/or assigns shall be legally responsible for compliance with the following restrictions:

1. That during construction of the Proposed Building, the Declarant will erect a temporary construction fence on the Premises with emergency egress gates as further described and illustrated in Exhibit C;
2. That prior to issuance of permits for new construction of the Proposed Building, the Declarant will install a sprinkler system in the Existing Building that uses the existing domestic waterline as a water source;
3. The Proposed Building will be fully sprinklered in accordance with DOB and FDNY requirements;
4. After a sprinkler system is installed in the Proposed Building, the Existing Building will connect to and source water from the Proposed Building's sprinkler system;
5. That any additional building built on the Premises must fully be sprinklered in accordance with DOB and FDNY requirements;
6. The Declarant will provide a permanent FDNY accessible gate at the front lot abutting the Driveway, as further illustrated in Exhibit C;
7. The Driveway shall remain clear and unobstructed at all times;
8. That a "No Parking Anytime" sign be installed in the side yard permanently, before, during, and after construction;
9. A separate address sign shall be installed on or near the front lot line indicating the address of the Existing Building;
10. That a security system connected to a company that provides continuous supervision monitoring heat, smoke, carbon monoxide and sprinkler flow will be installed in the Existing Building.
11. Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated without the prior written consent of the Board;

12. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;

13. In the event that the existing tax lot is subdivided, this Declaration must be recorded against the newly subdivided lot and the covenants set forth herein shall run with that land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns;

14. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the Board, including but not limited to, the Variance; and

15. In the event that the Declarant: (1) elects to relinquish the Variance Application, (2) the variance lapses and the Declarant's ability to renew the Variance Application expires, or (3) provisions in the ZR change so that both the Existing Building and the Proposed Building may exist as-of-right or (4) the Existing Building is demolished, this Declaration may be cancelled by the recordation of a Notice of Cancellation at the City Register's Office against the Premises, and upon the filing of such Notice of Cancellation, this Declaration shall automatically cease, extinguish, and be void and of no further force or effect.

THAT the fence located outside of the property line shall be removed prior to the issuance of any building permit;

THAT the existing two-story frame building shall be fully sprinklered; that any future structures constructed on the remaining portion of the subject site shall be fully sprinklered; that the 8-foot side yard shall be maintained clear at all times; that there shall be no parking at any time within the length of the side yard; that a separate address sign shall be installed on or near the front lot line indicating the address of the rear residential building; and that the rear residential building shall install a security system connected to a company that provides continuous supervision to monitor heat, smoke, carbon monoxide and sprinkler flow;

THAT a composite window-wall noise attenuation of 28 dBA shall be required for all proposed building facades, and an alternate means of ventilation shall be required and shall be incorporated into the building design and construction;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2016-4171-BZ"), shall be obtained within four (4) years, by April 9, 2023;

THAT proper handling, transportation and disposal of excavated materials from the site shall be conducted in accordance with applicable New York State Department of Environmental Conservation regulations; that the proposed vapor barrier system shall be used unless an amendment to the January 2019 RAP is approved by DEP; and that at the completion of the project, a professional engineer (P.E.) certified Remedial Closure Report shall be submitted to DEP for review and approval for the proposed project, which shall indicate that all remedial requirements

have been properly implemented (that is, proper transportation and disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; proof of installation of engineering control system; and two feet of DEP approved certified clean fill and top soil requirement in any landscaped or grass-covered areas not capped with concrete or asphalt, etc.);

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 9, 2019.

CERTIFICATION

***This copy of the Resolution
dated April 9, 2019
is hereby filed by
the Board of Standards and Appeals
dated April 26, 2019***



***Carlo Costanza
Executive Director***