



CITY PLANNING COMMISSION

June 19, 2013/Calendar No. 25

C 110178 ZMQ

IN THE MATTER OF an application submitted by T. F. Cusanelli Architect, P.C. pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 9a, establishing within an existing R5 District a C1-4 District bounded by a line 100 feet southwesterly of Broadway, 23rd Street, 33rd Avenue, and a line 100 feet northwesterly of 23rd Street, Borough of Queens, Community District 1, as shown in a diagram (for illustrative purposes only) dated March 4, 2013 and subject to the conditions of CEQR Declaration E-300.

This application for an amendment to the Zoning Map was filed by T.F. Cusanelli Architect, P.C. on December 17, 2010 to establish a C1-4 District within an existing R5 District, on a portion of one block, to legalize an existing non-complying side yard condition on a zoning lot containing five attached buildings on separate tax lots.

BACKGROUND

In September 2002 the New York City Department of Buildings (DOB) approved building plans submitted by the applicant for the construction of a row of five attached buildings on five tax lots (1, 36, 38, 40, and 42) that comprise a single corner zoning lot directly abutting an existing mixed-use development. The applicant's building plans, filed under the DOB's Professional Certification Program, were based on the assumption that the block containing the development site was a Predominantly Built-Up Area (PBA) as defined in the Zoning Resolution, which required the entire block to be within a single R4 or R5 district. R5 Infill regulations in a PBA allow a maximum residential Floor Area Ratio (FAR) of 1.65. R5 regulations would normally allow a maximum residential FAR of 1.25.

The applicant claims to have been unaware at the time that a portion of the block containing the applicant's development site had been rezoned a year earlier, on January 24, 2001 (C 010047 ZMQ), thereby splitting the block into two zoning districts and eliminating the applicant's ability to apply the higher R5 infill FAR when self-certifying building plans in 2002. The applicant's development was constructed at 1.59 residential FAR. The error was identified during a DOB audit and a stop work order was issued. By this time, construction was nearly complete.

The applicant then applied to amend the building plans by converting the first floor use of each of the five buildings to Use Group 4 community facility (medical office), thereby reducing the built residential FAR to 1.25. By this amendment to the building plans, the applicant was able to

complete four of the five buildings on tax lots 1, 38, 40, and 42. However, the change also introduced a new zoning non-compliance. In R5 districts, buildings that contain community facility uses and have an aggregate street wall width of greater than eighty feet must provide two side yards, each with a width of ten percent of the aggregate street wall width. The zoning lot remained non-complying since no side yard was provided at the northern side of tax lot 36. The building on lot 36 is nearly completed, but it has not yet received a certificate of occupancy. The DOB has issued certificates of occupancy for the four complying buildings, which have since been sold individually.

In September 2006, the applicant applied for a variance at the Board of Standards and Appeals to waive the required side yard. The variance would have allowed the non-complying building on lot 36 to be completed and occupied. In July 2009, the Board denied the application, ruling that the need for the side yard waiver was a self-created hardship and that the applicant “simply did not perform due diligence as to the zoning map of the subject site, which had changed two years prior to the commencement of construction” (287-06 BZ).

The applicant’s current rezoning proposal would eliminate the side yard requirement by extending an existing C1-4 district along 23rd Street at a depth of 100 feet. The rezoning area contains five tax lots (1, 36, 38, 40, and 42). In addition, the rezoning area contains a portion of lot 5, which fronts on 33rd Avenue. Lots 1, 38, 40, and 42 are each developed with three-story attached buildings. The legal occupancy of each building consists of medical offices on the ground floor and one residential unit each on the second and third floors. Lot 36 contains a nearly complete, unoccupied three-story building.

The surrounding area is developed with a mix of local retail and residential uses. Broadway, a primary local retail corridor, adjoins the northern end of the rezoning block. The zoning area is directly adjacent to a building with commercial and community facility uses with entrances on 23rd Street and Broadway. One block to the west of the site is 21st Street, a wide thoroughfare developed predominantly with auto-oriented commercial uses. Queensview Houses, a cooperative housing development containing 21 fourteen-story buildings, is located one block to

the south. 23rd Street and 33rd Avenue are predominantly developed with two- and three- story residential buildings.

ENVIRONMENTAL REVIEW

This application (C 110178 ZMQ) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 11DCP069Q. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on March 4, 2013.

UNIFORM LAND USE REVIEW

This application (C 110178 ZMQ) was certified as complete by the Department of City Planning on March 4, 2013, and was duly referred to Community Board 1 and the Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 1 held a public hearing on this application on April 16, 2013, and on that date, by a vote of 35 to 2 with 1 abstention, adopted a resolution recommending approval of this application.

Borough President

This application was considered by the Borough President, who issued a recommendation approving the application on May 16, 2013.

City Planning Commission Public Hearing

On May 8, 2013 (Calendar No. 2), the City Planning Commission scheduled May 22, 2013 for a public hearing on this application (C 110178 ZMQ). The hearing was duly held on May 22, 2013 (Calendar No. 14). There were two speakers in favor of the application.

The applicant's attorney described the proposal and the history of the development within the rezoning area, as well as his client's previous attempts to rectify the issue of development's non-compliance. He explained that the C1-4 rezoning would alleviate the need for the northernmost property to provide a complying side yard. He stated that a possible consequence of the application not being approved would be the demolition of the building.

The applicant also appeared in favor.

There were no other speakers, and the hearing was closed.

CONSIDERATION

The Commission believes that this application (C 110178 ZMQ) for an amendment of the Zoning Map is appropriate.

The Commission acknowledges that the applicant has exhausted all other options of relief of the zoning non-compliance for the vacant building on lot 36. The proposed zoning change would eliminate the need for a side yard in space currently occupied by the building on lot 36. The Commission notes that the proposed amendment would extend an existing zoning overlay district and that commercial uses, including store entrances, are present on adjacent properties to the north fronting 23rd Street. Absent the proposed rezoning, the building on lot 36 would either remain vacant, to the detriment of neighboring properties, or be demolished, to the detriment of the property's current owner. The proposed rezoning would allow the building on lot 36 to be occupied.

The Commission is also aware that a site inspection by Department of Buildings staff found that ground floors of occupied buildings contain non-conforming residential uses. While addressing this issue is beyond the scope of this rezoning application, the Commission encourages the

Department of Buildings to work with the applicant, and other property owners, to address this concern.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently modified, is further amended by changing the Zoning Map, Section No. 9a, by establishing within an existing R5 District a C1-4 District bounded by a line 100 feet southwesterly of Broadway, 23rd Street, 33rd Avenue, and a line 100 feet northwesterly of 23rd Street, Borough of Queens, Community District 1, as shown in a diagram (for illustrative purposes only) dated March 4, 2013 and subject to the conditions of CEQR Declaration E-300.

The above resolution (C 110178 ZMQ), duly adopted by the City Planning Commission on June 19, 2013 (Calendar No. 25), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, ESQ., Vice Chairman
ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
JOSEPH DOUEK, RICHARD W. EADDY, ANNA HAYES LEVIN,
ORLANDO MARIN, Commissioners

MICHELLE DE LA UZ, Commissioner, Voted No.

Queens Borough President Recommendation

APPLICATION: ULURP# 110178 ZMQ

COMMUNITY BOARD: Q01

DOCKET DESCRIPTION

IN THE MATTER OF an application submitted by Sheldon Lobel, P.C. on behalf of T. F. Cusanelli Architect P.C., pursuant to Sections 197-c and 201 of the NYC Charter, for an amendment of the Zoning Map, Section 9a by establishing within an existing R5 District a C1-4 District bounded by a line 100 feet southwesterly of Broadway, 23rd Street, 33rd Avenue, and a line 100 feet northwesterly of 23rd Street, Borough of Queens, Community district 1, as shown in a diagram (for illustrative purposes only) dated March 4, 2013 and subject to the conditions of CEQR Declaration E-300.

PUBLIC HEARING

A Public Hearing was held in the Borough President's Conference Room at 120-55 Queens Boulevard on Thursday, May 16, 2013 at 10:30 A.M. pursuant to Section 82(5) of the New York City Charter and was duly advertised in the manner specified in Section 197-c (i) of the New York City Charter. The applicant made a presentation. There were no other speakers. The hearing was closed.

CONSIDERATION

Subsequent to a review of the application and consideration of testimony received at the public hearing, the following issues and impacts have been identified:

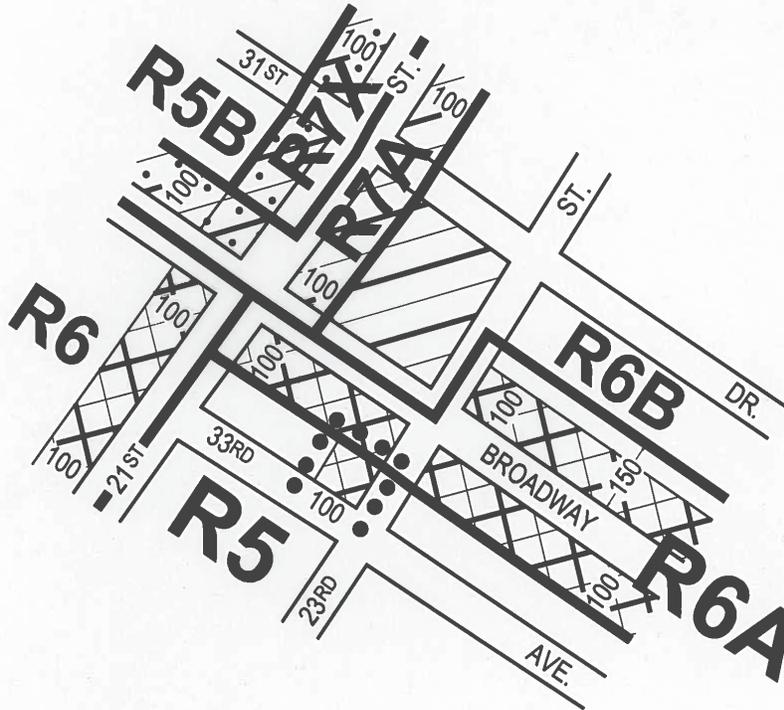
- o The applicant is proposing to establish a C1-4 overlay in an existing R5 district. The proposed C1-4 overlay would be an extension of an existing overlay to the north of the site. The site is located at the northwest corner of the intersection at 33rd Avenue and 23rd Street;
- o The affected properties are five contiguous lots (Block 555 Lots 1, 36, 38, 40 & 42) and a portion of one lot (Block 555 Lot 5). The proposed C1-4 district would legalize an existing building on Lot 36 that was built without a required side yard.;
- o The surrounding area is developed with a mix of residential buildings ranging from 3-stories, 7-stories up to 15-stories tall. The applicant's site is developed with five 3-story buildings with ground floor community facility space and residences above. Four of the five buildings are currently occupied. The last building on Lot 36 remains unoccupied.;
- o The existing buildings on the site were built using infill regulations. Subsequently, after construction had been mostly complete the Department of Buildings made a determination that the infill regulations did not apply and therefore the built residential floor area was in excess of the maximum allowable Floor Area Ratio. The applicant revised the proposed uses of the first floors from residential to community facility uses which brought the floor area into compliance. However, the buildings were built to the north lot line without a required side yard.;
- o The applicant was unsuccessful in their efforts to have a variance granted by the Board of Standards and Appeals. They were also unsuccessful with their Article 78 proceeding to reverse the BSA decision.;
- o Community Board 1 approved this application at a public hearing held on April 16, 2013 by a vote of thirty-five (35) in favor with two (2) against and one (1) abstention.

RECOMMENDATION

Based on the above consideration, I hereby recommend approval of this application.


PRESIDENT, BOROUGH OF QUEENS


DATE

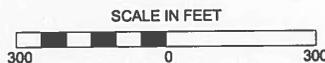


CITY PLANNING COMMISSION
 CITY OF NEW YORK
 DIAGRAM SHOWING PROPOSED
ZONING CHANGE
 ON SECTIONAL MAP

9a
 BOROUGH OF
QUEENS

J. Miraglia, PE
 for J. Miraglia, Director
 Technical Review Division

New York, Certification Date
 MARCH 04, 2013



- NOTE:**
- Indicates Zoning District Boundary.
 - The area enclosed by the dotted line is proposed to be rezoned by establishing a C1-4 District within an existing R5 District.
 - Indicates a C1-3 District.
 - Indicates a C1-4 District.
 - Indicates a C2-3 District.