

**315-12-BZ**

**CEQR #13-BSA-057Q**

APPLICANT – Akerman Senterfitt, LLP, for Pali Realty LLC, owner.

SUBJECT – Application November 20, 2012 – Special Permit (§73-50) to allow for a community facility building, contrary to rear yard requirements (§33-29). C4-3 zoning district.

PREMISES AFFECTED – 23-25 31<sup>st</sup> Street, east side of 31<sup>st</sup> Street, between 23<sup>rd</sup> Avenue and 23<sup>rd</sup> Road, Block 835, Lot 27 & 31, Borough of Queens.

**COMMUNITY BOARD #1Q**

**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 decision of the Queens Borough Commissioner, dated October 22, 2012, acting on Department of Buildings Application No. 420229194, reads in pertinent part:

[t]he rear lot line of this zoning lot coincides with the residential district boundary. Provide 30 ft. rear yard as per ZR 33-292; and

WHEREAS, this is an application under ZR §§ 73-50 and 73-03, to legalize, on a site in a C4-3 zoning district abutting an R5B zoning district, the construction of an eight-story community facility building with an open area 23 feet above curb level with a minimum depth of 20 feet, contrary to ZR § 33-292; and

WHEREAS a public hearing was held on this application on February 26, 2013 after due notice by publication in *The City Record*, with continued hearings on March 19, 2013 and April 23, 2013, and then to decision on May 21, 2013; and

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

WHEREAS, Community Board 1, Queens, recommends approval of the application on condition that (1) the rear wall with a height of 23 feet be completely finished with stucco; (2) the mechanical equipment on the roof setback at the rear be installed on vibration pads and encased with sound-attenuating materials to reduce noise and vibrations; (3) the entire parapet wall at the rear setback be high enough to conceal rooftop mechanical equipment; (4) the front of the building and setback area be well-lit when the building is not in operation; and (5) the applicant remedy damages to the adjacent owners on 31<sup>st</sup> and 32<sup>nd</sup> streets by agreeing to pay repair costs; and

WHEREAS, certain members of the surrounding

community provided written and oral testimony in support of the application; and

WHEREAS, certain members of the surrounding community provided written and oral testimony in opposition to the application (“the Opposition”); and

WHEREAS, the Opposition’s primary concerns are that: (1) no grant should be given until all damage to adjacent properties has been repaired and owners’ costs recouped; (2) the insurance claims process has been unsatisfactory; (3) the applicant has not provided evidence of the need for the special permit; and (4) the potential nuisance of light and noise on the adjacent properties; and

WHEREAS, the subject site is an interior zoning lot (comprising Tax Lots 27 and 31) located on the east side of 31st Street between 23rd Avenue and 23rd Road, with 125 feet of frontage on 31st Street, a depth of 90 feet, and a total lot area of 11,250 sq. ft.; and

WHEREAS, the site is located within a C4-3 zoning district that abuts an R5B zoning district to its rear; and

WHEREAS, pursuant to ZR § 33-292, an open area 23 feet above curb level with a minimum depth of 30 feet is required on a zoning lot within a C4-3 district with a rear lot line that abuts the rear lot line of a zoning lot in a residence district; and

WHEREAS, the applicant proposes to legalize a partially-constructed eight-story community facility building that provides an open area along the rear lot line beginning above the roof of the first story (23 feet above curb level), with a depth of 20 feet (the “20-foot yard”), rather than the required 30 feet; and

WHEREAS, the applicant represents that the building complies in all other respects with the applicable provisions of the Zoning Resolution; and

WHEREAS, under ZR § 73-50, the Board may grant a waiver of the rear yard (open area) requirements set forth in ZR § 33-29 in appropriate cases; and

WHEREAS, the applicant states that the instant application is an appropriate case for a waiver of the requirements set forth in ZR § 33-29; and

WHEREAS, the applicant states that the non-complying 20-foot yard is attributable to a design error by the project architect and that the error was discovered after approximately 80 percent of the building was completed; and

WHEREAS, the applicant states that in order to comply with ZR § 33-292 at this stage of construction, the rearmost 10-foot portion of the building at the first seven stories would have to be demolished by hand and reconstructed with a completely redesigned structural system; the applicant represents that such work is infeasible; and

WHEREAS, as to the infeasibility, the applicant represents that the line of columns at the rear of the building begin below ground at the foundation and continue to the roof level, and cannot practically be

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moved without the construction of new footings and the removal of the parking ramps; and

WHEREAS, additionally, the roof water tanks would have to be relocated to a different portion of the roof and such portion would have to be structurally reinforced to carry the additional loads, at significant design and construction costs; and

WHEREAS, lastly, the removal of 10 feet of building depth would result in a building depth of 45 feet at the fourth through eighth stories, which the applicant asserts is inadequate to provide an efficient floor plate for a modern medical office use; and

WHEREAS, the applicant asserts that the waiver will not have an adverse effect on the surrounding area; and

WHEREAS, the applicant represents that of the seven other zoning lots located on the 31st Street frontage, six extend to the rear lot line; and

WHEREAS, the applicant also notes that prior to the construction of the subject building, Lot 27 was occupied by a one-story commercial building that extended to its rear lot line and Lot 31 was occupied by a three-story residential building that provided an approximately 20-foot rear yard consistent with the proposed; and

WHEREAS, the applicant notes that there is a lack of adequate medical facilities in the neighborhood and states that the proposed facility is desired by the community at large; and

WHEREAS, the applicant notes that the proposed tenants include University Orthopedics of NYC, Metropolitan Gastroenterology and Endoscopy Center of Queens; and

WHEREAS, the applicant notes that if the building were redesigned to comply with ZR § 33-292, the building height would be increased from 158 feet to 182 feet; such increase in height would be as of right and result in longer shadows being cast on neighboring buildings; further, the decreased floor plates would be detrimental to the proposed medical use, which the applicant states requires large floor plates so as to minimize the movement of patients from floor to floor; and

WHEREAS, the applicant submitted a shadow study demonstrating the increased neighborhood impact of a taller building; and

WHEREAS, during the public review and hearing process, the Opposition raised concerns about the impact of the building on the residences directly abutting the site; specifically, the Opposition raised concerns regarding: (1) the visibility, noise and potential contamination from exhaust and intake vents and stair pressurization fans at the rear first story roof; (2) glass blocks within the rear wall at the first story and basement, which would allow light to transfer

outside the building; (3) open violations from the Department of Buildings (“DOB”); and (4) damages allegedly sustained by the adjacent properties during the course of construction of the subject building and related DOB violations; and

WHEREAS, accordingly, the Board directed the applicant to (1) redesign the exhaust and vent system so that it was further from the adjacent residents at the rear; (2) remove the glass blocks in the rear wall and replace with concrete block and stucco that will be opaque; (3) describe the nature of any outstanding violations; and (4) address the Opposition’s concerns about property damage; and

WHEREAS, in response, the applicant: (1) relocated exhaust vents from the rear of the building to the front setback; (2) relocated intake vents and stair pressurization fans to be as far as functionally possible from the rear parapet; (3) provided a detailed statement from the project engineer certifying the make, model, size, functionality and necessity of the intake vents and stair pressurization fans; (4) submitted a visibility study indicating that the intake vents and stair pressurization fans will not be visible from the tallest of the residences abutting the rear lot line (23-26 32nd Street); (5) amended the plans to show the replacement of glass blocks with solid masonry; and (6) submitted evidence of a request from the project architect to the Queens DOB Commissioner for permission to perform work in order to remove the conditions that gave rise to the violations; and

WHEREAS, as to the damages allegedly sustained by the adjacent properties during the course of construction at the subject building and related DOB violations, the applicant asserts that such matters are under the purview of the general contractor and its insurance company and that it is prohibited, by contract, from intervening in the insurance negotiations; and

WHEREAS, further, the applicant represents that the violations were all issued in response to the neighbors’ complaints and, thus, cannot be resolved absent the neighbors’ cooperation, particularly given that a number of the violations are not actually issued to the subject lot, but to the neighbors’, and that other violations require access to the neighbors’ property; and

WHEREAS, a search of the Buildings Information System reflects that there are three outstanding violations on the site: (1) ECB Violation No. 34959031Y was issued on September 18, 2012 and alleged a failure to safeguard persons and property affected by construction operations, contrary to New York City Building Code § 3301.2; the respondent was found in violation on January 22, 2013, and no certificate of correction has been approved by DOB; (2) ECB Violation No. 34959207Z was issued on January 15, 2013 and alleged a failure to safeguard persons and property affected by construction operations, contrary to BC § 3301.2; the respondent was found in violation

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on April 30, 2013, and no certificate of correction has been approved by DOB; and (3) DOB Violation No. 073112C0101SA was issued on July 31, 2012 and alleged that the borough commissioner had issued an intent to revoke the permit and approval for Job No. 420229194 and a Stop Work Order, pursuant to New York City Administrative Code § 28-207.2; and

WHEREAS, the Board notes that disputes between neighbors and the resolution of property damage caused by construction are beyond its purview and it cannot get involved in such disputes; however, it strongly encourages the parties to work together to achieve a resolution fairly and expeditiously; and

WHEREAS, the applicant represents that the negotiations between the contractor's insurance company and the neighbors' insurance companies are ongoing; and

WHEREAS, the applicant also notes that, on April 15, 2013, one of the neighbors has commenced an action in New York State Supreme Court, Sesumi v. Pali Realty, LLC et al., Index No. 7428/13, Queens County, for alleged property damages; and

WHEREAS, the Opposition also raised additional concerns regarding light pollution from the building, the sufficiency of the roof drains, the functioning of the electrical and mechanical systems and equipment, the general contractor's means and methods of construction, and the completeness of plans submitted in connection with this application; and

WHEREAS, as to these concerns, the Board finds that the applicant adequately addressed them and that all construction methods and plans are subject to DOB review and approval; and

WHEREAS, the Board notes that the construction activities have given rise to certain damage to property and disputes with adjacent property owners, but that such effects are the result of physical construction work and not the land use and planning effects that the Board considers in determining whether or not the open area required by ZR § 33-292 must be provided; and

WHEREAS, further, the Board notes that the use and building are permitted as of right but for the rear ten feet of building depth above a height of 23 feet; and

WHEREAS, the Board notes that the portion of the new building which appears to have created the most conflict with the adjacent property owners is actually the portion of the building (and its rear wall) within the rear yard *below* 23 feet, which is permitted as-of-right pursuant to ZR § 33-292; and

WHEREAS, the Board finds that the extra ten feet of building depth at the rear above a height of 23 feet has not led to the adjacent property owners' concerns in the short-term and is compatible with the adjacent uses in the long-term, pursuant to ZR §§ 73-03 and 73-50; however, the impact of the physical construction work

upon adjacent properties may be considered by the Board in determining the appropriate conditions and safeguards to impose along with the grant of a special permit pursuant to ZR § 73-03; and

WHEREAS, the Board notes that the applicant has satisfied all of the Community Board's requests related to building design and site conditions, in that: (1) the rear wall will be completely finished with stucco; (2) the mechanical equipment on the roof setback at the rear will be installed on vibration pads and encased with sound-attenuating materials to reduce noise and vibrations; (3) the entire parapet wall at the rear setback is high enough to conceal rooftop mechanical equipment; and (4) the front of the building and setback area will be well-lit when the building is not in operation; and

WHEREAS, as to the Community Board's additional request that the applicant remedy damages to the adjacent owners on 31st and 32nd streets, the Board notes that both parties have testified that there are ongoing negotiations between the property owners' and contractor's insurance companies to resolve the damages; and

WHEREAS, based on the record, the Board finds that the application meets the requirements of ZR § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of ZR § 73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-50 and 73-03.

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR §§ 73-50 and 73-03, to permit, on a site in a C4-3 zoning district abutting an R5B zoning district, the construction of an eight-story community facility building with an open area 23 feet above curb level with a minimum depth of 20 feet, contrary to ZR § 33-292, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received April 2, 2013" – sixteen (16) sheets; and *on further condition*;

THAT the vents atop the rear first story roof will be for intake only;

THAT the stair pressurization fans atop the rear first story roof will be operated only in an emergency;

THAT all lighting will be directed away from adjacent residences, as reflected on the plans;

THAT the glass blocks at the rear wall will be

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replaced by masonry and stucco;

THAT the mechanical equipment on the roof setback at the rear will be installed on vibration pads and encased with sound-attenuating materials to reduce noise and vibrations;

THAT the entire parapet wall at the rear setback will be built to a sufficient height, as reflected on the BSA-approved plans and approved by DOB, to conceal rooftop mechanical equipment;

THAT the front of the building and setback area will be well-lit when the building is not in operation;

THAT the above conditions be noted on the Certificate of Occupancy;

THAT DOB will not issue a Temporary Certificate of Occupancy (or Final Certificate of Occupancy) and the building will not be occupied until all violations on the site have been cured to DOB's satisfaction;

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

THAT substantial construction be completed in accordance with ZR § 73-70; 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,  
May 21, 2013.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 21, 2013.**

**Printed in Bulletin No. 21, Vol. 98.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

