

717-28-BZ

APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for Allan's Garage LLC, owner.

SUBJECT – Application August 26, 2014 – Amendment (§11-412) of a previously approved variance which permitted the operation of a public parking facility. The amendment seeks to permit a reduction in size of an existing 515 parking space facility to allow a 143 space parking facility to be included in an as-of-right residential development. C2-8A zoning district.

PREMISES AFFECTED – 152-58 East 87th Street, south side of East 87th Street, 35.17' east of the corner formed by the intersection of East 87th Street and Lexington Avenue, Block 1515, Lot(s) 46, 45, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a variance to allow the reduction in height and commercial floor area of an existing public parking garage (Use Group 8) and an as-of-right residential enlargement atop the remaining portion of the garage; and

WHEREAS, a public hearing was held on this application on January 13, 2015, after due notice by publication in the *City Record*, and then to decision on January 30, 2015; and

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

WHEREAS, Community Board 8, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is located on the south side of East 87th Street, between Lexington Avenue and Third Avenue, partially within a C2-8 zoning district and partially within a C5-1A zoning district; and

WHEREAS, the site comprises Tax Lots 45 and 46; it has approximately 155 feet of frontage along East 87th Street and 15,588 sq. ft. of lot area; and

WHEREAS, Lot 46 is occupied by a six-story public parking garage (Use Group 8) with parking for 515 automobiles (the “Garage Building”), and Lot 45 is occupied by a nine-story commercial building (the “Adjoining Building”), which is operated as a hotel (Use Group 5); the applicant states that the site has a total commercial floor area of approximately 88,162 sq. ft. (5.66 FAR); and

WHEREAS, the site has been subject to the Board’s jurisdiction since February 8, 1929, when, under the subject calendar number, the Board permitted the

construction of the Garage Building (then referred to as “a garage for more than five motor vehicles”) within a business use district, contrary to the use regulations of the 1916 Zoning Resolution; and

WHEREAS, the grant has been amended at various times to permit the enlargement of the Garage Building and the construction of the Adjoining Building; and

WHEREAS, the applicant states that the site is non-complying with respect to commercial FAR and rear yard requirements and non-conforming with respect to the Use Group 8 parking use; and

WHEREAS, the applicant now proposes to reduce the parking garage in height from six stories to three stories, reduce the number of parking spaces within the garage from 515 to 150, and construct an additional 16 stories of residential (Use Group 2) atop the remaining garage in the C5-1A portion of the site and an additional 14 stories of residential (Use Group 2) atop the remaining garage in the C2-8 portion of the site; the applicant notes that approximately 62 dwelling units will be constructed under the proposal; and

WHEREAS, the applicant states that the enlargement will comply in all respects with the applicable underlying residential bulk regulations and result in a decrease in the degree of non-compliance with respect to commercial floor area; specifically, although the total floor area of the site will increase from 88,162 sq. ft. (5.66 FAR) to 155,501 sq. ft. (9.98 FAR), the commercial floor area will be reduced from 88,162 sq. ft. (5.66 FAR) to 36,147 sq. ft. (2.32 FAR) (20,236 sq. ft. of Use Group 8 and 15,911 sq. ft. of Use Group 5); and

WHEREAS, in addition, the applicant notes that the proposal reflects significant changes to the site and the existing building to better compliment the residential context that has developed since the site was developed in the 1930s, including: (1) a reduction in the number of curb cuts from five to one; (2) plantings and street trees along East 87th Street; and (3) the installation of a new façade, including additional fenestration, that both respects the historic distinctive features of the Garage Building and is compatible with surrounding buildings; and

WHEREAS, finally, the applicant states that the proposal is consistent with the use and bulk of the neighborhood, which the applicant describes as predominantly high-density residential, with commercial uses on the lower floors; the applicant also notes that there are three public parking garages within two blocks of the site; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit enlargement of a building subject to a use variance issued prior to December 15, 1961, provided that such enlargement is limited to the zoning lot that was granted such variance and provided that the floor area for the use authorized under the grant is not enlarged by greater than 50 percent of the floor area

717-28-BZ

occupied by such use as of December 15, 1961; and

WHEREAS, the applicant states, as noted above, that the proposal both reduces the amount of floor area devoted to the Use Group 8 use authorized under the grant and complies in all respects with the applicable bulk regulations; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information regarding the operation of the garage; and

WHEREAS, in response, the applicant represents that the proposed garage would comply with all Department of Buildings ("DOB") requirements for a public parking garage, including the permitted configuration and number of spaces; the applicant notes that the garage will have attendants and nine reservoir spaces and will utilize approximately 45 parking stackers, subject to the final approval of DOB; and

WHEREAS, based on the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 11-412.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 8, 1929, to permit the noted reduction in height and commercial floor area and residential enlargement atop the remaining portion of the garage; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received December 4, 2014' - three (3) sheets and 'January 20, 2015' - two (2) sheets; and *on further condition*:

THAT the commercial floor area at the site shall not exceed 36,147 sq. ft.;

THAT DOB shall review and approve the configuration of the parking, including the use of stackers;

THAT all DOB/other agency applications related to this grant shall be signed off by January 30, 2019;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

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

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.

A true copy of resolution adopted by the Board of Standards and Appeals, January 30, 2015.

Printed in Bulletin Nos. 5-6, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

Adopted by the Board of Standards and Appeals,
January 30, 2015.



665-39-A & 107-14-A

APPLICANT – Jesse Masyr, Esq/Fox Rothschild, for City Club Realty, LLC., owner.

SUBJECT – Application May 22, 2014 – Amendment to a previously approved waiver of a non-complying exit stair; and an Appeal filed pursuant to MDL Section 310(2)(a) proposed an addition to the existing building which will require a waiver of MDL Section 26(7)pursuant to Section 310. C6.45 SPD zoning district.

PREMISES AFFECTED – 55-57 West 44th Street, between 5th Avenue and Avenue of the Americas, Block 1260, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 5, 2014, acting on DOB Application No. 121328198 reads, in pertinent part:

The proposed enlargement increases the degree of non-compliance of the existing inner courts, contrary to MDL Section 26(7), contrary to MDL 30; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary court requirements to permit a nine-story enlargement to an existing transient hotel (Use Group 5), contrary to the court requirements of MDL § 26(7); in addition, this application seeks a reopening and certain amendments to BSA Cal. No. 665-39-A; and

WHEREAS, a public hearing was held on this application on November 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on January 6, 2015, and then to decision on January 30, 2015; and

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

WHEREAS, the subject site is located on the north side of West 44th Street, between Fifth Avenue and Avenue of the Americas, within a C6-4.5 zoning district within the Special Midtown District; and

WHEREAS, the site is an interior lot with approximately 45 feet of frontage along West 44th Street and 4,502 sq. ft. of lot area; and

WHEREAS, the site is occupied by a nine-story commercial building (the “Building”), which was constructed in 1902 as a social club with guest rooms and is currently occupied as a hotel (Use Group 5) with an eating and drinking establishment (Use Group 6) on the

first story; the Building has approximately 32,092 sq. ft. of floor area (7.12 FAR) and 65 hotel rooms; and

WHEREAS, the site has been subject to the Board’s jurisdiction since May 31, 1939, when under BSA Cal. No. 665-39-A, the Board waived certain Building Code provisions in connection with a conversion of the first, fourth, fifth, sixth, and seventh stories and the penthouse from guest rooms to offices; the Board included the following conditions with its grant: (1) that the Building’s height would not be increased; (2) that two stairways with fireproof partitions would be provided from the roof to the street; (3) that the existing eastern rear stair would be a minimum of 2’-10” in width; and (4) that at least one fire escape had an exit in the rear yard of the adjoining property; and

WHEREAS, the Board has adopted two minor amendments to the 1939 grant; on September 26, 1939, the Board modified the grant to allow the social club use on the seventh floor; on January 30, 1940, the Board amended to grant to clarify the height of the Building; and

WHEREAS, the applicant states that, in or about 1999, the Building was converted back to predominantly hotel use; in connection with this conversion, the third story was divided into two stories, and the penthouse was enlarged and reclassified as the ninth story; and

WHEREAS, the Board notes and the applicant acknowledges that the Board’s authorization for the 1999 conversion was required but never obtained; however, DOB did authorize the conversion and issued a final certificate of occupancy for the Building on September 18, 2012; and

WHEREAS, the site includes two inner courts beginning at the second story, one along the western lot line and the other along the eastern lot line (the “Courts”); the Courts each have an area of approximately 76 sq. ft., a height of approximately 82’-0” and minimum widths that vary from 8’-0” to 10’-0”; the applicant notes that 16 existing hotel rooms rely on the Courts for light and ventilation; and

WHEREAS, the applicant proposes to enlarge the Building by nine stories, resulting in a total building height of 192’-5”, an increase in floor area from 32,092 sq. ft. (7.12 FAR) to 54,024 sq. ft. (12.0 FAR), and the addition of 61 hotel rooms; and

WHEREAS, with respect to stories two through nine, the applicant proposes to maintain the Courts at their existing dimensions; with respect to stories 10 through 18, the applicant proposes to increase the size of the Courts, from approximately 76 sq. ft. to approximately 126 sq. ft. (9’-0” by 14’-0”) on the east side of the Building and approximately 153 sq. ft. (9’-0” by 17’-0”) on the west side; and

WHEREAS, the applicant states that the 16 existing hotel rooms that currently rely on the Courts for light and

665-39-A & 107-14-A

ventilation will continue to rely on the Courts for required light and ventilation after the Building is enlarged; however, none of the 61 hotel rooms in the proposed enlargement will rely on the Courts; instead, the new rooms will receive required light and ventilation from the West 44th Street side of the Building or from the required rear yard; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered Class B multiple dwellings; therefore, the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 4(32), the Courts are considered “inner courts”; and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court, but in no event less than 15 feet in width at any point; and (2) the area of such inner court shall be twice the square of the required width of the court and a minimum of 350 sq. ft. but need not exceed 1,200 sq. ft.; the applicant notes that the Zoning Resolution does not provide any standards for courts that serve transient hotels; and

WHEREAS, thus, based on the existing height of the Courts (82'-0"), per MDL § 26(7), the Courts are required to have minimum widths of 27'-4" and minimum areas of 1,200 sq. ft. ($82'-0" \times 0'-4" = 27'-4"$; thus, $27'-4" \times 27'-4" \times 2 = 1,494 \text{ sq. ft.} > 1,200 \text{ sq. ft.}$); as noted above, each of the Courts has an area of approximately 76 sq. ft.; and

WHEREAS, the applicant states that the Courts in the proposed enlargement will have minimum widths of 9'-0", heights of 179'-0", and an areas of 126 sq. ft. (eastern) and 153 sq. ft. (western); thus, based on the proposed height of the Courts (179'-0"), per MDL § 26(7), the enlarged Courts are required to have minimum widths of 53'-8" and, again, minimum areas of 1,200 sq. ft. ($179'-0" \times 0'-4" = 53'-8"$; thus, $53'-8" \times 53'-8" \times 2 = 5,767 \text{ sq. ft.} > 1,200 \text{ sq. ft.}$); and

WHEREAS, to summarize, the proposed portion of the Courts, though larger in area than the existing portion, increases the existing degree of non-compliance with respect to MDL § 26(7) *vis à vis* the 16 existing hotel rooms with legally-required windows opening upon the Courts; however, no new non-compliance with respect to the enlarged portion of the Courts is created, because the proposed hotel rooms in the enlarged portion of the building do not rely on the Courts for required light and ventilation; and

WHEREAS, accordingly, the applicant requests that the Board invoke its authority under MDL § 310 to permit the proposed enlargement contrary to MDL § 26(7); and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed

on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the Building was constructed in 1902; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts; therefore, the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(3); and

WHEREAS, turning to the findings under MDL § 310(2)(a), the applicant asserts that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, in support of this assertion, the applicant submitted a comparison between the proposal and the enlargement of the Building in accordance with the MDL; and

WHEREAS, the applicant asserts that owing to the narrow width of the site (approximately 45 feet), the locations and dimensions of the Courts, and the minimum dimensional requirements of MDL § 26(7) (two courts with minimum areas of 1,200 sq. ft.), an MDL-compliant enlargement would be predominantly dedicated to the inner court space and would yield narrow, inefficient floorplates that would be wholly unsuitable for hotel rooms; accordingly, the applicant's complying scenario is a nine-story enlargement that provides a rear yard above the Courts; and

WHEREAS, the applicant states that the complying enlargement would be slender, shallow, and inefficient, with nearly half of the enlargement's floorplate devoted to elevator shafts and stairwells; as such, the complying building accommodates only two or three hotel rooms per story, for a total of 26 additional hotel rooms – significantly less than the 61 additional rooms reflected in the proposal; and

WHEREAS, further, the applicant represents that the complying enlargement would cost \$471,211 per hotel room, for a total cost of \$12,251,476; in comparison, the proposal would cost \$264,909 per hotel room, for a total cost of \$16,159,421; therefore, the complying enlargement would have 57 percent fewer hotel rooms but cost only 24 percent less to develop; and

WHEREAS, the applicant also notes that it will be more expensive to finance the complying enlargement

665-39-A & 107-14-A

than the proposal, which will result in a significantly diminished return on investment; likewise, absent the requested waiver, a substantial portion of the site's development rights will not be utilized; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL § 26(7) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the primary intent of MDL § 26(7) is to ensure that rooms within multiple dwellings have adequate light and ventilation; and

WHEREAS, the applicant notes that only 16 of the 65 existing hotel rooms have legally-required windows opening upon the Courts and that none of the 61 proposed hotel rooms will have windows opening upon the Courts; as such, the majority of hotel guests will have legally-required windows in accordance with the MDL; and

WHEREAS, the applicant states that the proposed enlargement has been specifically designed to allow for the Courts on the new stories to exceed the sizes of the existing non-complying Courts, in order to preserve the amount of light and ventilation currently provided to the 16 rooms opening upon the Courts; specifically, the western Court in the enlargement will be 100 percent larger than the existing western Court and the eastern Court will be 80 percent larger than the existing eastern Court; and

WHEREAS, the applicant also states that in order to further mitigate the effects of the deficient sizes of the Courts, it will: (1) paint the new and existing inner courts white to increase ambient light; (2) provide mechanical ventilation (HVAC units) to the rooms relying solely on the Courts for light and ventilation; and (3) install LED lighting in the existing portion of the Courts; such lighting will operate during daylight hours and provide an average of 12 foot candles of light per story, which the applicant notes is 12 times the amount of light required for a court under the building code; and

WHEREAS, the applicant notes that the Courts align with the inner courts at adjacent hotels—the Algonquin Hotel to the west and the Iroquois Hotel to the east—which further expands the perceived sizes of the Courts and their ability to admit natural light and ventilation; and

WHEREAS, finally, the applicant contends that because the Building is used as a transient hotel, it is used by visitors to New York City, who are unlikely to spend a substantial portion of daylight hours in their rooms; and

WHEREAS, at hearing, the Board directed the applicant to: (1) clarify the location and number of

required ADA-accessible rooms in the enlarged portion of the Building; and (2) discuss why the double-height sky lobby at the 17th story cannot be used for hotel rooms; and

WHEREAS, in response, the applicant clarified the location and required number of accessible rooms within the Building and demonstrated their effect on the sizes and configurations of the Courts; and

WHEREAS, as to the sky lobby, the applicant explained that because the first story of the Building includes an eating and drinking establishment, the lobby at the first story is minimally-sized and lacks seating and other guest amenities; thus, additional lobby space is necessary for the hotel; the applicant contends that the 17th story is ideal, because at that height, the building is comparatively shallow and unsuitable for hotel rooms but sufficiently-sized and arranged for a lobby; and

WHEREAS, based on the above, the Board finds that the proposed modifications to the court requirements of MDL § 26(7) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested modification of the court requirements of MDL § 26(7) is appropriate, with certain conditions set forth below; and

WHEREAS, turning to the Building Code variances authorized under BSA Cal. No. 665-39-A, the applicant seeks to amend the grant to: (1) reflect the 1999 conversion back to predominantly hotel use and the proposed enlargement; (2) eliminate the fire tower and fire escape requirements; (3) eliminate the condition regarding the maximum height of the Building; and (4) maintain the Building Code variance with respect to the eastern rear stair, which, as noted above is 2'-10", which is 0'-2" less than the minimum required for the proposed occupancy under 1968 Building Code § 27-375(b)(1); and

WHEREAS, the Board notes that it has authority to vary the requirements of the Building Code under Charter § 666(6) and that the Board may grant a modification of the Building Code pursuant to Charter § 666(7), if it finds that there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law and that the alternative to strict compliance is within the spirit of the law, secures public safety, and does substantial justice; and

WHEREAS, the Board also notes that it has authority to permit amendments to existing grants, provided that the original findings are either not disturbed or can be made anew; and

WHEREAS, the applicant asserts that the requested amendments are appropriate because they reflect an

665-39-A & 107-14-A

overall decrease in the degree of non-compliance with the applicable provisions of the 1968 Building Code, which governed the 1999 conversion and continue to apply to the proposal; and

WHEREAS, specifically, the applicant states that the 1968 Building Code requires neither a fire tower, nor a fire escape for the Building as proposed; and

WHEREAS, in addition, the applicant contends that the sole building code variance remaining (which allows the 0'-2" deficiency in the width of the eastern rear stair) is necessary to maintain an existing condition that has existed unaltered since 1901; and

WHEREAS, the applicant asserts that the following are practical difficulties in widening the existing stair to comply with 1968 Building Code § 27-375(b)(1): (1) widening the stair would require reconfiguration of the existing hotel floorplates and would result in the loss of rooms; and (2) the existing hotel at the site would have to limit occupancy of the rooms on multiple stories during reconstruction of the deficient stair, resulting in significant lost revenue; and

WHEREAS, the Board agrees with the applicant that, as in 1939, there are practical difficulties in widening the existing stair; and

WHEREAS, the applicant contends that the proposal is within the spirit of the law; and

WHEREAS, the applicant states that minimum stair width requirements of the code exist to ensure that stairs can accommodate the anticipated occupant loads of the floors they serve; the applicant notes that the width and capacity of an exit stair is based upon the occupant load of each floor rather than the occupant load of the cumulative floors, because it is assumed that the lower floor occupants will have left the stairs when the upper floor occupants require them; and

WHEREAS, the applicant represents that the occupant loads per floor in the enlarged portion of the Building will actually be lower than those in the existing portion of the Building; thus, notwithstanding that the Building is being enlarged, there is effectively no increase in the number of persons who must use the deficient stair to exit the Building; and

WHEREAS, the applicant also notes that aside from the 0'-2" deficiency in the existing portion of the Building, the Building will fully comply with the egress requirements of the 1968 Building Code; and

WHEREAS, the Board agrees with the applicant that the proposal does not conflict with the spirit of the law; and

WHEREAS, as to public safety, the applicant states that the proposed enlargement of the Building will be accompanied by numerous fire and life safety systems upgrades, including a fire alarm system that complies with the 2014 Building Code, a new auxiliary radio communication system, and a modified and expanded smoke purge system; and

WHEREAS, the applicant adds that the mechanical, electrical, and plumbing systems in the enlargement will comply with the 2014 Building Code and that the enlargement will be non-combustible, two-hour fire-rated construction; in addition, the entire Building will be protected with sprinklers; and

WHEREAS, the Board agrees that the proposal includes sufficient improved measures and will not compromise public safety; and

WHEREAS, as to substantial justice, the applicant contends and the Board agrees that allowing the continued use of a deficient stair that was previously authorized by the Board and does not impact the safety of the occupants of the Building does substantial justice; and

Therefore it is Resolved, that Board of Standards and Appeals *modifies* the decision of the Department of Buildings, dated May 5, 2014, and *grants* this application, limited to the decision noted above, and *reopens* and *amends* BSA Cal. No. 665-39-A, having been adopted on May 31, 1939, so that as amended this portion of the resolution shall read: "to permit the enlargement and conversion of the Building to hotel use, to eliminate the fire tower and fire escape requirements, as well as the condition regarding the maximum height of the Building, and to allow continued use of the eastern rear stair at a minimum width of 2'-10", contrary to 1968 Building Code § 27-375(b)(1), *on condition* construction shall substantially conform to the plans filed with the application marked, 'Received January 23, 2015' – twenty-two sheets (22) sheets"; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB objections related to the MDL;

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

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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 30, 2015.

A true copy of resolution adopted by the Board of Standards and Appeals, January 30, 2015.

Printed in Bulletin Nos. 5-6, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.



110-14-A thru 112-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for WRR Realty Corp., owner.

SUBJECT – Application May 29, 2014 – Proposed construction of buildings that does not front a legally mapped street, pursuant the Article 3, Section 36 of the General City Law. R3A zoning district.

PREMISES AFFECTED – 115, 109, 105 Roswell Avenue, north side of Roswell Avenue, 149.72 feet east of Wild Avenue, Block 2642, Lot 88, 91, 92, Borough Staten Island

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”) dated April 28, 2014, acting on DOB Application Nos. 520192185, 520192238, 520192247, read in pertinent part:

The street giving access to the proposed building is not duly placed the official map of the City of New York, therefore,

A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law;

B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2008 NYC Building Code; and

WHEREAS, this is an application to allow the construction of three two-story, single-family dwellings which do not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on January 13, 2015, after due notice by publication in *The City Record*, and then to decision on January 30, 2015; and

WHEREAS, Commissioner Montanez performed an inspection of the site, premises, surrounding area and neighborhood; and

WHEREAS, the subject site is located north side of Rosewell Avenue, within an R3A zoning district; and

WHEREAS, Roswell Avenue is an unmapped access road that is paved and improved to a width of 50 feet; Roswell Avenue provides two-way access between Wild Avenue to the west and Dean Avenue to the east; and

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Fire Com'r.

Borough Com'r.

WHEREAS, the applicant proposes to construct on the site three two-story, single-family dwellings, each with approximately 1,423 sq. ft. (0.58 FAR); and

WHEREAS, by letter dated January 16, 2015, the Fire Department states that it has no objection to the proposal provided that the proposed buildings are sprinklered throughout in compliance with the NYC Fire Code and the NYC City Building Code; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant approval of the application, subject to certain conditions set forth herein.

Therefore it is Resolved, that the decisions of the DOB, dated April 28, 2014, are modified by the power vested in the Board by Section 36 of the General City Law, and that these appeals are granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received November 18, 2014”-(1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval shall be limited to the relief granted by the Board in response to objections cited by DOB;

THAT dwellings shall be fully-sprinklered in compliance with the NYC Fire Code and the NYC City Building Code; and

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

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, January 30, 2015.



186-13-BZ

APPLICANT – Harold Weinberg, P.E., for Apostollis Goutsios, owner.

SUBJECT – Application June 21, 2013 – Special Permit (§73-622) for an enlargement to an existing single family home, contrary to side yard regulations (ZR 23-461) of the zoning resolution. R5 (BR) zoning district.

PREMISES AFFECTED – 117 Gelston Avenue, east side 125'-13/8" south of 90th Street and 92nd Street, Block 6089, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated June 18, 2013, acting on DOB Application No. 320729984, reads in pertinent part:

1. Proposed north side yard in an R5B zone in the Bay Ridge Special Zoning District must be 8'-0" and is contrary to section 23-461 ZR.

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R5B zoning district, within the Bay Ridge Special Zoning District, the proposed enlargement of a single-family home which does not comply with the zoning requirements for side yards contrary to ZR §23-461; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, with continued hearings on December 9, 2014 and January 13, 2015, and then to decision on January 30, 2015; and

WHEREAS, Vice Chair Hinkson and Commissioners Montanez and Ottley-Brown performed an inspection of the subject premises and site, together with its surrounding area and neighborhood; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of Gelston Avenue, between 90th Street and 92nd Street, within an R58 zoning district, within the Special Bay Ridge District; and

WHEREAS, the site has approximately 25 feet of frontage along Gelston Avenue and approximately 2,904 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-family residence with 3,443 sq. ft. of floor area (1.2 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to enlarge the building and increase its floor area from 3,443 sq.

ft. (1.2 FAR) to 3,845 sq. ft. (1.3 FAR); the maximum permitted floor area is 3,925 sq. ft. (1.35 FAR); and

WHEREAS, the applicant seeks to maintain an existing side yard of 4'- 3" at the north of the building and of 0'-3" at the south of the building, notwithstanding that there exists fewer than 8' of open space between the subject building and the residential building to its south; the requirement is a single side yard with a minimum total width of 8'-0" and a total of 8' between buildings containing residential uses; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

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 § 73-622, to permit, on a site within an R5B zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side yards contrary to ZR § 23-461; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “January 20, 2015”– (8) sheets; and *on further condition*:

THAT the applicant will maintain a side yard with a minimum width of 4'- 3" at the north of the building and a side yard with a minimum width of 0'- 3" at the south of the building, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

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 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 30, 2015.

A true copy of resolution adopted by the Board of Standards and Appeals, January 30, 2015.

Printed in Bulletin Nos. 5-6, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.



271-13-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application September 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated September 16, 2013, acting on DOB Application No. 320765043, reads in pertinent part:

The proposed horizontal and vertical enlargement of the existing one-family residence in an R3-1 Zoning District:

1. Creates a new non-compliance with respect to Lot Coverage and is contrary to Section 23-141(b) ZR.
2. Creates a new non-compliance with respect to Floor Area and is contrary to Section 23-141(b) ZR.
3. Creates a new non-compliance with respect to the Rear Yard and is contrary to Section 23-47 ZR.
4. Increases the degree of non-compliance with respect to the side yard(s) and is contrary to Sections 23-461(a) ZR and 54-31 ZR.

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in *The City Record*, with continued hearings on September 9, 2014, October 7, 2014, November 18, 2014, and January 6, 2015, and then to decision on January 30, 2015; and

WHEREAS, Chair Perlmutter, Vice Chair Hinkson and Commissioners Montanez and Ottley-Brown performed inspections of the subject premises and site, together with its surrounding area and neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has 25 feet of frontage along Norfolk Street and 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story, single-family home with 751 sq. ft. of floor area (0.30 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to enlarge the single-family home by enlarging the first floor of the existing building and adding a second floor, thereby increasing the floor area of the building from 751 sq. ft. (0.30 FAR) to 2,579 sq. ft. (1.02 FAR) (the maximum permitted floor area is 1,500 sq. ft. (0.60 FAR)) and increasing the height of the building from 14’-5” to 32’-0”; and

WHEREAS, in order to comply with applicable flood regulations the applicant shall raise the building by removing the existing floor beams from the north and south walls thereof, increasing the height of the shelf upon which the existing floor currently rests using solid brick masonry and replacing the existing floor beams so that the first floor elevation will be increased from 6’-7” to 14’-10”; and

WHEREAS, upon raising the first floor of the building, the applicant will create a cellar at the subject premises, which shall stand upon a 6” concrete slab above 4” of gravel, and which shall have a height of 7’-10” and which shall be used for a single accessory parking space and for storage; and

WHEREAS, the applicant seeks to decrease the open space ratio from 70 percent to 52 percent; the minimum required open space ratio is 65 percent; and

WHEREAS, the applicant seeks to maintain an existing side yard width of 0’-11” and increase the width of a non-complying side yard from 0’-7” to 4’-3”; the general requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, however, as per ZR § 23-48, the minimum total width of 13’-0” is not required at the subject site; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 30’-2” to 20’-0”; a rear yard with a minimum depth of 30’-0” is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed lot 1.02 FAR and 2,579 sq. ft. of floor area is consistent with the bulk and lot area of one and two-family homes in the surrounding area; and

271-13-BZ

WHEREAS, in support of this assertion, the applicant provided evidence of ten one or two-family homes within 400' of the subject site with an FAR in excess of 1.10 and floor area in excess of 3,000 sq. ft.; and

WHEREAS, at hearing, the Board directed the applicant to narrow its analysis of neighborhood character to focus on the block on which the site is located, as such character is, in the subject area, block specific; and

WHEREAS, in response, the applicant identified one and two-family homes on the subject block which consist of two or more stories and provided a streetscape which included the proposed building; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

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 § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "December 23, 2014"– (14) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,579 sq. ft. (1.02 FAR), a minimum open space of 52 percent, side yards with minimum widths of 4'-3" and 0'-11", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

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 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 30, 2015.

A true copy of resolution adopted by the Board of Standards and Appeals, January 30, 2015.

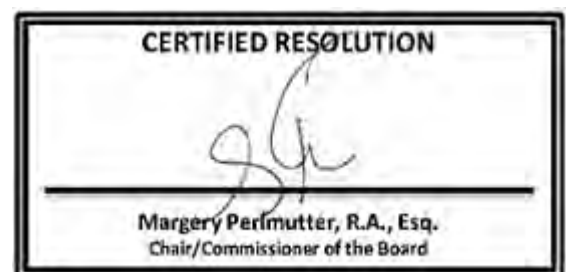
Printed in Bulletin Nos. 5-6, Vol. 100.

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To Applicant

Fire Com'r.

Borough Com'r.



38-14-BZ

APPLICANT – Eric Palatinik, P.C., for Yury Dreysler, owner.

SUBJECT – Application February 28, 2014 – Special Permit (§73-622) for the enlargement of single family home, contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 116 Oxford Street, between Shore boulevard and Oriental Boulevard, Block 8757, Lot 89, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated February 4, 2014, acting on DOB Application No. 320870063, reads in pertinent part:

1. Proposed floor area ratio is contrary to ZR 23-141(a).
2. Proposed open space contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141(a).
4. Proposed side yards (exist. Non-compliance) contrary to ZR 23-461(a).
5. Proposed rear yard is contrary to ZR 23-47.

Minimum required: 30’

Proposed: 20’

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, with continued hearings on November 18, 2014, November 25, 2014, and January 6, 2015, and then to decision on January 30, 2015; and

WHEREAS, Chair Perlmutter, Vice Chair Hinkson and Commissioners Montanez and Ottley-Brown performed inspections of the subject premises and site, together with its surrounding area and neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of Oxford Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has 25 feet of frontage along Oxford Street and approximately 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story, single-family home with 834 sq. ft. of floor area (0.33 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to enlarge the single-family home by enlarging the first floor of the existing building and adding an additional two floors, thereby increasing the floor area of the building from 834 sq. ft. (0.33 FAR) to 2,489 sq. ft. (0.99 FAR) (the maximum permitted floor area is 1,500 sq. ft. (0.6 FAR) which includes the 300 square feet (0.1 FAR) that must be provided directly under a sloping roof) and increasing the height of the building from 16’-9” to 35’-0”;

WHEREAS, in order to comply with applicable flood regulations the applicant shall raise the building by removing the existing floor beams from the north and south walls thereof, increasing the height of the shelf upon which the existing floor currently rests using solid brick masonry and replacing the existing floor beams so that the first floor elevation will be increased from 6’-7” to 13’-00”;

WHEREAS, the applicant seeks to decrease the open space ratio from 67 percent to 60 percent; the minimum required open space ratio is 65 percent; and

WHEREAS, the applicant seeks to maintain existing side yard widths of 0’-1” and 2’-11”;

the general requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, however, as per ZR § 23-48, the minimum total width of 13’-0” is not required at the subject site; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 34’-2” to 20’-8”;

a rear yard with a minimum depth of 30’-0” is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed 0.99 FAR and 2,489 sq. ft. of floor area is consistent with the bulk and lot area of one and two-family homes in the surrounding area; and

WHEREAS, in support of this assertion, the applicant provided evidence of 19 one- or two-family homes within 400’ of the subject site with an FAR equal to or in excess of 0.99 and floor area equal to or in excess of 2,450 sq. ft.; and

38-14-BZ

WHEREAS, at hearing, the Board directed the applicant to narrow its analysis of neighborhood character to focus on the block on which the site is located, as such character is, in the subject area, block specific; and

WHEREAS, in response, the applicant identified one and two-family homes on the subject block which consist of two or more stories and provided a streetscape which included the proposed building; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

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 § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “December 18, 2014”– (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of to 2,489 sq. ft. (0.99 FAR), a minimum open space of 60 percent, side yards with minimum widths of 0’-1” and 2’-11”, and a minimum rear yard depth of 20’-8”, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

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 DOB must ensure compliance with all other applicable provisions of the Zoning Resolution,

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the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 30, 2015.

