

**321-13-BZ**

APPLICANT – Eric Palatnik, P.C., for Alejandro Finardo, owner.

SUBJECT – Application December 18, 2013 – Variance (§72-21) for the construction of a three family home on a vacant lot, contrary to side yard requirements (§23-462(a)) and the parking space requirements of (§25-32). R5 zoning district.

PREMISES AFFECTED – 37-19 104th Street, between 37th Avenue and 37th Road, Block 1771, Lot 42, Borough of Queens.

**COMMUNITY BOARD #3Q**

**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 November 21, 2013, acting on DOB Application No. 420568406, reads in pertinent part:

1. As per ZR 23-462(a), other than single-or two-family residences, a building containing residences are required to have two (2) side yards each with a minimum width of eight (8) feet.
2. As per ZR 25-23 Group Parking Facilities, for all new residences, in a [SIC] R5 district, parking shall be provided for 85% of the total number of residences; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a vacant site within an R5 zoning district, the construction of a three-story, three-family residential building that does not comply with the zoning requirements for side yards and parking, contrary to ZR §§ 23-462 and 25-23; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in the *City Record*, with continued hearings on January 27, 2015, March 3, 2015, and then to decision on March 24, 2015; and

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

WHEREAS, Community Board 3, Manhattan, recommends that the instant application be disapproved; and

WHEREAS, the subject site is a rectangular lot located on the east side of 104<sup>th</sup> Street, between 37<sup>th</sup> Avenue and 37<sup>th</sup> Road, within an R5 zoning district, in Queens; and

WHEREAS, the site has 25 feet of frontage along 104<sup>th</sup> Street, and a depth of 100 feet, and 2,500 sq. ft. of lot area; and

WHEREAS, the site is vacant and located in an R5 zoning district which was rezoned from an R6B zoning district in 2009; and

WHEREAS, the applicant proposes to construct a three-story, three-family residential building, with a cellar, which will contain 3,120 sq. ft. of floor area (FAR 1.24), have a lot coverage of 42 percent, will be 30'-09" in height, will have a front yard of 10'-0", will have a rear yard of 38'-0", side yards of 2'-0" (to the north) and 3'-0" (to the south), with no parking spaces; and

WHEREAS, in order to construct the building as proposed, the applicant seeks the following waivers: (1) side yards with widths of 2'-0" and 3'-0" (per ZR § 23-462, two side yards are required, each with a minimum width of 8'-0"); and (2) zero parking spaces (per ZR § 25-23, three parking spaces are required in an R5 zoning district with three dwelling units); and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions that create practical difficulties and unnecessary hardships in developing the site in compliance with applicable regulations: (1) the narrow width of the site; and (2) that fact that the site is vacant; and

WHEREAS, the applicant states that the site's narrow width (25'-0") and the fact that it is vacant render the site unique, and sites, in support of that statement, a land use study concluding that within approximately 400 feet of the site, there are six lots (of a total 153 lots) of 35 feet or less in width that are also vacant; and

WHEREAS, the applicant distinguishes the instant site from the five other sites within the 400 foot radius of the site by noting that (1) one of the sites is being developed and will be occupied by a semi-detached house; (2) two of the sites are utilized as a parking lots for a church on an adjacent site; (3) another one of the sites, currently used for parking, can be improved with a semi-detached building; and (4) one of the lots, while vacant, is under common ownership with an adjacent site; and

WHEREAS, the applicant concludes that for the foregoing reasons, the site is unique in that it is the only vacant site with a width of less than 35 feet which is impacted by the side yard requirements applicable to buildings within an R5 zoning district within an area of approximately 400 feet; and

WHEREAS, the applicant asserts that the site's unique characteristics create unnecessary hardships in developing the site as-of-right; and

WHEREAS, the applicant notes that the site cannot be developed with a one- or two-family home because it does not have the minimum lot area required in an R5 zoning district, as per ZR §23-32, and states that because of the site's narrow width, a complying three-family home would result in a residential building with dwelling units 9'-0" in width; and

WHEREAS, the applicant states further that

**321-13-BZ**

providing the three required parking spaces on the site would similarly render the development infeasible due to the lot's narrowness; and

WHEREAS, at hearing, the Board questioned whether the required parking could be located in such a way so as not to render a parking compliant three-family home impracticable; and

WHEREAS, in response, the applicant provided drawings depicting parking situated in the rear of the proposed building and demonstrated that a driveway with a minimum width of 8'-0" leading to the rear of the proposed building would result in a building with a width of 15'-0"; and

WHEREAS, the applicant responded further that parking could not be located in front of the proposed building because setting the proposed building back to accommodate the parking spaces would result in an encroachment into the required 30'-0" rear yard and because if three cars were parked in front of the proposed building, they would impede access thereto; and

WHEREAS, the Board agrees that it is not feasible to provide parking on the site; and

WHEREAS, based upon the foregoing, the Board finds that the site's narrow width, and the fact that it is vacant, constitute unique physical conditions that create unnecessary hardships in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant contends that, per ZR § 72-21(b), there is no reasonable possibility of development of the site in compliance with the Zoning Resolution; and

WHEREAS, in addition to the proposal, the applicant studied the feasibility of constructing an as-of-right three-family home which, as discussed above, would feature a 9'-0" wide residential building with a living space that is only 7'-0" wide; and

WHEREAS, the applicant states that the as-of-right makes it impossible for the applicant earn a reasonable return on the zoning lot; and

WHEREAS, the applicant also notes that because the adjacent sites to the north and south of the subject site are improved with detached homes it is not feasible to build an attached home in the space; and

WHEREAS, thus, the applicant contends that only the proposal would realize a reasonable rate of return on investment; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in compliance with applicable zoning requirements would provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and

will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the neighborhood is characterized by three-family homes and narrow buildings; and

WHEREAS, the applicant submits a study of three-family homes within 400 feet of the site, which concludes that of the 153 lots within that radius, there are 35 lots occupied by three-family homes (23%); and

WHEREAS, the applicant further submits a study and photographic evidence of narrow and non-compliant side yards and states that the requested side yard waiver will not alter the essential character of the neighborhood in which the site is located; and

WHEREAS, as the applicant performed an analysis of the width of buildings within 400 feet of the subject site and concludes that of the 146 homes that are within 400 feet of the site, 56 (38%) are 20'-0" or less in width and that 44 (30%) are between 20'-0" and 23'-0" in width, thus, the width of the proposed building will be consistent with neighborhood character; and

WHEREAS, with respect to the requested waiver of the applicable parking regulations, the applicant states that the neighborhood in which the subject site is located is well served by public transportation, including the 7 train and E/F/M/R subway lines and the Q23 bus line; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the peculiarities of the site; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the

**321-13-BZ**

proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a vacant site within an R5 zoning district, the construction of a three-story, three-family residential building that does not comply with the zoning requirements for side yards and parking, contrary to ZR §§ 23-462 and 25-23; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received August 7, 2014” – (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of three stories, a maximum of 3,120 sq. ft. of floor area (1.24 FAR), side yards with minimum widths of 2’-0” (to the north) and 3’-0” (to the south), and zero parking spaces;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by March 24, 2019;

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

Adopted by the Board of Standards and Appeals, March 24, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 24, 2015.**

**Printed in Bulletin Nos. 13-14, Vol. 100.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

