

324-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Eli Rowe, owner.

SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to allow the enlargement of a single-family residence, contrary to floor area and open space regulations (§23-141). R2 zoning district.

PREMISES AFFECTED – 78-32 138th Street, southwest corner of the intersection of 138th Street and 78th Road, Block 6588, Lot 25, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 27, 2014, acting on DOB Application No. 420230422, reads in pertinent part:

Proposed FAR and open space ratio contrary to ZR 23-141; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”) and open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

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

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Melinda Katz recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection of 78th Road and 138th Street, within an R2 zoning district; and

WHEREAS, the site has approximately 71 feet of frontage along 78th Road, approximately 102 feet of frontage along 138th Street, and 5,400 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story, single-family home with approximately 2,527 sq. ft. of floor area (0.47 FAR); and

WHEREAS, the applicant proposes enlarge the building by filling in an existing double-height space, resulting in an increase in floor area from 2,527 sq. ft.

(0.47 FAR) to 2,774 sq. ft. (0.51 FAR); the maximum permitted floor area is 2,700 sq. ft. (0.5 FAR); and

WHEREAS, in addition, the applicant seeks a decrease in open space ratio from 150 percent to 137 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the special permit authorized by ZR § 73-621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant submitted a copy of the current certificate of occupancy for the building (No. 108877, dated April 20, 1956) to demonstrate that the building existed as a residence before December 15, 1961, which is the operative date within the subject R2 zoning district; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed FAR does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant represents that the proposed reduction in the open space results in an open space that is at least 90 percent of the minimum required; and

WHEREAS, as to the FAR, the applicant represents that the proposed floor area does not exceed 110 percent of the maximum permitted; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) the extent to which the floor space in the attic is under a sloping roof; (2) the status of construction at the site; and (3) whether the open patio is included in floor area; and

WHEREAS, in response, the applicant submitted a plan clarifying the extent to which the floor space in the attic is under a sloping roof; and

WHEREAS, as to the status of construction, the applicant represents that as-of-right construction at the site is substantially completed; and

WHEREAS, as to the proposed open patio, the applicant provided a copy of a DOB determination, which classifies the space in question as excluded from floor area; and

WHEREAS, based upon its review of the record,

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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, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 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 §§ 73-621 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR and open space ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 15, 2014"–(11) sheets and "July 22, 2014"–(1) sheet; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of to 2,774 sq. ft. (0.51 FAR) and a minimum open space ratio of 137, 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) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall 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

A true copy of resolution adopted by the Board of Standards and Appeals, July 29, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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

Adopted by the Board of Standards and Appeals,
July 29, 2014.

