

**286-13-BZ**

APPLICANT – Eric Palatnik, P.C., for Michael Trebinski, owner.

SUBJECT – Application October 11, 2013 – Variance (§72-21) for the proposed enlargement of an existing one-story residential home, contrary to front yard (§23-45); side yard (§23-161); floor area and lot coverage (§23-141) and off street parking requirements (§25-621(B)). R4 zoning district.

PREMISES AFFECTED – 2904 Voorhies Avenue, Voorhies Avenue, between Nostrand Avenue and a dead end portion of East 29th Street, Block 8791, Lot 201, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....4  
Negative:.....0  
Absent: Vice Chair Collins.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 16, 2013, acting on DOB Application No. 320718309, reads in pertinent part:

ZR 23-45 – proposed front yard is less than required minimum;

ZR 23-461 – proposed side yard is less than required minimum;

ZR 23-141 – proposed floor area is greater than maximum (permitted), proposed FAR is greater than maximum (permitted), proposed lot coverage is greater than required maximum; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, the enlargement of an existing single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, front yard, and side yards, contrary to ZR §§ 23-141, 23-45, and 23-461; and

WHEREAS, a public hearing was held on this application April 1, 2014, after due notice by publication in *The City Record*, with continued hearings on May 6, 2014, and June 10, 2014, and then to decision on June 24, 2014; and

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

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

WHEREAS, the subject site is located on the southeast corner of the intersection of Voorhies Avenue and East 29th Street, within an R4 zoning district; and

WHEREAS, the site has 18 feet of frontage along

Voorhies Avenue, 100 feet of frontage along East 29th Street, and 1,800 sq. ft. of lot area; the applicant notes that East 29th Street dead-ends near the southern boundary of the site, forming a cul-de-sac; and

WHEREAS, the site is occupied by a one-story, single-family home with 708 sq. ft. of floor area (0.40 FAR); and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the home contrary to the FAR, lot coverage, front yard, and side yards, and increase the floor area from 708 sq. ft. (0.4 FAR) to 1,980 sq. ft. (1.1 FAR) (the maximum permitted floor area is 1,350 sq. ft. (0.75 FAR)); and

WHEREAS, the applicant states that the proposed enlargement will: (1) increase in lot coverage from 39.5 percent to 60 percent (a maximum lot coverage of 45 percent is permitted); (2) provide one front yard with a depth of 36’-2½” along Voorhies Road (two front yards with a minimum depth of 10’-0” are required, one along Voorhies Road and one along East 29th Street); and (3) maintain the existing non-complying side yard depth of 3’-9½” along the southern boundary of the site (two side yards—one along the eastern boundary and one along the southern boundary—are required with minimum depths of 5’-0”); and

WHEREAS, the applicant notes that, initially, it also sought a waiver for a parking space contrary to ZR § 25-621; however, in response to the Board’s concerns, the parking space was excluded from the proposal; and

WHEREAS, accordingly, the applicant seeks a variance to permit the proposed FAR, lot coverage, and front and side yard non-compliances pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in compliance with underlying zoning regulations: (1) the site’s narrow width in combination with its location on a corner; (2) the location of the existing building on the site; and (3) the underdevelopment of the site; and

WHEREAS, the applicant states that the site’s narrow width (18’-0”) and location on a corner combined, make complying development of the site infeasible; and

WHEREAS, the applicant notes that because the site is on a corner, it must provide yards for the full length and width of the site; as such, the maximum width of a home on a narrow lot within an R4 district is 3’-0”; and

WHEREAS, the applicant represents that the yard requirements alone result in a home that is not even wide enough for one habitable room under the building code; thus, as-of-right, the site cannot be used to construct a dwelling, absent some relief from the Board; and

WHEREAS, as to the uniqueness of this practical

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difficulty, the applicant identified 13 sites located on corners within the subject R4 district and concluded the subject site is the narrowest, with the other sites ranging in width from 19'-0" to 60'-0"; and

WHEREAS, the applicant states that the location of the existing home at the site also produces unique practical difficulties in further developing the site; and

WHEREAS, the applicant states that the existing home's walls are contiguous with the southern, western, and eastern boundaries of the site, resulting in a front yard depth along Voorhies Avenue of 56'-8½"; as such, and given the R4 yard regulations described above, the home could be enlarged by a maximum of 176 sq. ft.; none of which would be habitable or even practically useful for storage space, because its maximum width would be 2'-0"; similarly, it is not feasible to maintain the existing 708 sq. ft. home as-is, because the applicant represents that it is too small to marketable as a single-family home in this neighborhood; and

WHEREAS, finally, the applicant asserts that the site is significantly underdeveloped (the existing FAR is 0.4; the maximum FAR is 0.75) as compared to sites with similar lot areas in the surrounding neighborhood; and

WHEREAS, in support of this assertion, the applicant submitted a study of the 83 sites within 400 feet of the site; based on the study, the average FAR is 1.63; the applicant notes that four particularly large buildings on average-sized sites are skewing the average; however, when the outliers are removed (along with one parking lot and one vacant site), the average floor area is 2,184 sq. ft. (0.96 FAR); when only single-family homes are considered, there are 47 sites, with an average floor area of 1,914 sq. ft. (0.86 FAR), which the applicant notes is more than twice the existing 0.4 FAR at the subject site; and

WHEREAS, the applicant explored the feasibility of an as-of-right enlargement of the home; however, as noted above, such an enlargement results in an additional 176 sq. ft. of virtually unusable floor area; and

WHEREAS, based upon the above, the Board finds that, pursuant to ZR § 72-21(a), the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board agrees that because of the site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is characterized by low-density, attached, detached or semi-detached, two- or three-story homes, with varying rear and side yard depths, and, typically, shallower front yard depths than are provided at

the site; as to floor area, as noted above, the proposed floor area of 1,980 sq. ft. is well within the average size of homes in the vicinity; as such, the proposal is consistent with the use, bulk, and appearance of the neighborhood; and

WHEREAS, the applicant also notes that the proposal will maintain the historic yard non-compliances, which, along with the site's location adjacent to the East 29th Street cul-de-sac, mitigates the impact of such non-compliances upon the surrounding neighborhood; and

WHEREAS, as to adjacent uses, the applicant states that there is a single-family home directly east of the site, a single-family home west of the site across the East 29th Street cul-de-sac, a six-story multiple dwelling directly south of the site, and north across Voorhies Avenue, P.S. 52 (Sheepshead Bay Elementary School); and

WHEREAS, the applicant states that since the enlargement vertically extends three of the existing four walls, the impact of the home upon adjacent uses is minimal; where the building will expand horizontally and vertically, it will be nearer to the existing home directly east of the site; however, in a typical situation, both homes would occupy the portion of the lot nearest the street frontage they share; here, the home on the site will have a front yard depth of 36'-2½" and be pulled towards the rear of the site and the adjacent home will have a rear yard depth in excess of 40'-0" and a front yard depth of approximately 10'-0"; thus, the minor decrease in the distance between these buildings is mitigated by the fact that they are still significantly more separated than most adjacent homes in the surrounding neighborhood; and

WHEREAS, at hearing, the Board directed the applicant to: (1) submit clearer photographs showing the surrounding area; (2) revise its land use studies to justify its FAR waiver; (3) examine the feasibility of reducing the size of the enlargement; and (4) amend its plans to include a note that the porch will be as approved by DOB; and

WHEREAS, in response, the applicant provided clearer photographs and submitted revised land use studies and amended plans as directed; and

WHEREAS, as to the feasibility of reducing the size of the enlargement, the applicant submitted plans showing that any reduction in the size of the enlargement will result in the loss of an entire bedroom, which it represents makes the entire proposal infeasible for the owner; and

WHEREAS, therefore, the Board finds that this action will neither 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant asserts that the above-noted hardships were not created by the owner but are

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inherent in the site's narrowness and existing, underdeveloped building; and

WHEREAS, the Board also finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the unique conditions at the site, per ZR § 72-21(d); and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.13, §§ 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 ZR § 72-21, to permit, on a site within an R4 zoning district, the enlargement of an existing single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), lot coverage, front yard, and side yards, contrary to ZR §§ 23-141, 23-45, and 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 23, 2014"- (8) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: two stories and an attic, a maximum floor area of 1,980 sq. ft. (1.1 FAR), a front yard along Voorhies Avenue with a minimum depth of 36'-2½", and a maximum lot coverage of 60 percent, per 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 objection(s);

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

THAT significant construction will proceed in accordance with ZR §72-23; 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, June 24, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, June 24, 2014.**

**Printed in Bulletin No. 26, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

