

***CORRECTION**

The resolution adopted on March 4, 2014, under Calendar No. 234-13-BZ and printed in Volume 99, Bulletin No. 10, is hereby corrected to read as follows:

234-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Dov Lipschutz, owner.

SUBJECT – Application August 16, 2013 – Variance (§72-21) for the enlargement of an existing two-family detached residence to be converted to a single-family home, contrary to minimum front yard (§23-45(a)); and less than the required rear yard (ZR §23-47). Special Permit (§73-621) for an enlargement which is contrary to floor area (ZR 23-141). R3-2 zoning district.

PREMISES AFFECTED – 1653 Ryder Street, aka 1651 Ryder Street, Located on the northeast side of Ryder Street between Quentin road and Avenue P, Block 7863, lot 18, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings (“DOB”), dated August 9, 2013, acting on DOB Application No. 320516811, reads in pertinent part:

1. FAR exceeds maximum permitted, contrary to ZR 23-141(b);
2. Proposed conditions increase the degree of non-compliance with respect to the required minimum front yard, contrary to ZR 23-45(a);
3. Proposed conditions violate required rear yard, contrary to ZR 23-47; and

WHEREAS, this is an application under ZR §§ 72-21 and 73-621, to permit, within an R3-2 zoning district, the conversion (from a two-family residence to a single-family residence) and enlargement of an existing residential building, which does not comply with the zoning requirements for floor area ratio (“FAR”), front yard, and rear yard, contrary to ZR §§ 23-141, 23-45, and 23-47; and

WHEREAS, a public hearing was held on this application February 4, 2014, after due notice by publication in *The City Record*, and then to decision on March 4, 2014; and

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped interior lot located on the east side of Ryder Street, between Avenue P and Quentin Road, within an R3-2 zoning district; and

WHEREAS, the site has 40 feet of frontage along Ryder Street and 3,855 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a two-story, two-family home with 1,985.41 sq. ft. of floor area (0.52 FAR), and an attic; and

WHEREAS, the applicant notes that the building has existing complying side yard widths of 5’-0” and 10’-10½”, a complying rear yard with a depth of 36’-7”, and a non-complying front yard ranging in depth from 9’-11” to 14’-1” (a minimum front yard depth of 15’-0” is required); and

WHEREAS, the applicant proposes to enlarge the existing cellar, first and second stories, and the attic of the building contrary to the FAR, front yard, and rear yard requirements, and increase the floor area from 1,985.41 sq. ft. (0.52 FAR) to 2,544.02 sq. ft. (0.66 FAR); the maximum permitted floor area is 1,927 sq. ft. (0.5 FAR), however, a 20 percent increase in FAR pursuant to ZR § 23-141(b)(1) is available, resulting in a maximum permitted floor area of 2,313 sq. ft. (0.6 FAR); and

WHEREAS, the applicant also proposes to maintain a portion of its existing, non-complying front yard depth at 9’-11” and reduce a portion of its existing, non-complying front yard depth from 14’-1” to 12’-1” (a minimum depth of 15’-0” is required), and reduce its complying rear yard depth from 36’-7” to 24’-11” (a minimum depth of 30’-0” is required); 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 the building’s 1954 Certificate of Occupancy authorizing a two-family residence to demonstrate that the building existed as a residence well before June 20, 1989, which is the operative date within the subject R3-2 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, provided that the proposed floor area ratio does not exceed 110 percent of the maximum permitted (0.66 FAR);

WHEREAS, the applicant represents that the proposed floor area ratio is 110 percent of the maximum permitted (0.6 FAR); and

234-13-BZ

WHEREAS, therefore, the Board finds that the proposed increase in floor area is permitted under ZR § 73-621; however, ZR § 73-621 is not available to enlarge the building contrary to the front and rear yard requirements; and

WHEREAS, accordingly, the applicant seeks a variance pursuant to ZR § 72-21 for those portions of the proposal; and

WHEREAS, the applicant states that the irregular lot shape is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the site in compliance with underlying zoning regulations; and

WHEREAS, the applicant states that the lot's shape is irregular, in that its rear lot line is diagonal, which creates a lot depth that varies from approximately 91 feet on the southeastern lot line to approximately 101 feet on the northwestern lot line; and

WHEREAS, the applicant asserts that such shape decreases the lot area available in the rear of the building, which contributed to the existing building being constructed closer to the front lot line and further into the required front yard, which, in turn, creates a practical difficulty enlarging the building in accordance with the front and rear yard requirements; and

WHEREAS, the applicant states that the lot shape is unique, and in support of this statement, submitted a study of the surrounding 24 blocks (approximately 900 sites); and

WHEREAS, the applicant represents that, according to the study, only two blocks out of 24 contain lots that share the site's diagonal rear lot line condition, and only 29 lots within those blocks have, as a result of their diagonal rear lot line, lot depths of 100 feet or less; and

WHEREAS, the applicant further distinguishes 23 of the 29 seemingly similar lots as follows: (1) 15 lots are overbuilt and cannot seek the same relief (a 10 percent FAR waiver under ZR § 73-621); (2) four lots are within .03 of the maximum permitted FAR and therefore cannot feasibly be enlarged; (3) two lots are corner lots without required rear yards; and (4) two have particularly wide frontages (61 feet and 80 feet), which mitigates the loss of space owing to their diagonal rear lot line; and

WHEREAS, consequently, the applicant states that only six lots out of 900 (less than one percent) nearby can be considered similar to the subject site; as such, the applicant asserts that the site's shape creates a unique practical difficulty in complying with the zoning regulations; and

WHEREAS, the applicant explored the feasibility of an as-of-right enlargement of the home; however, as noted above, such an enlargement would have to be accomplished entirely at the rear of the building and would result in a modest increase in floor area from 1,985.41 sq. ft. (0.52 FAR) to 2,313 sq. ft. (0.6 FAR); in

contrast, the proposal allows for modest enlargements at the front and rear of the building; and

WHEREAS, accordingly, the applicant asserts that the lot shape creates practical difficulties in developing the site as-of-right; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates 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 neither the proposed variance, nor the special permit will 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, detached or semi-detached, two- or three-story homes, with varying rear and side yard depths, and, typically, shallower front yard depths and setbacks; as such, the proposal is consistent with the use, bulk, and appearance of the neighborhood; and

WHEREAS, the applicant states that the proposal will maintain the existing minimum front yard depth of 9'-11" (albeit with a slight decrease in the non-complying front yard depth at the northern side of the lot from 14'-1" to 12'-1"), decrease its complying rear yard by approximately 5'-0", exceed the permitted FAR by less than ten percent and comply in all other respects (side yards, height, and lot coverage) with the R3-2 bulk regulations; and

WHEREAS, as to adjacent uses, the applicant states that the proposal maintains the existing complying side yards, and therefore has no impact on the parcels directly north and south of the site; and while the majority of the enlargement is proposed at the rear of the building (its east side), the applicant notes that the nearest structures to the east are a swimming pool (on Lot 68) and a garage (on Lot 66); thus, the overall impact of the proposal on adjacent uses is minimal; and

WHEREAS, as to the proposed 0.66 FAR, the applicant notes that directly across the street, the homes on Lots 63 and 64 have 0.66 FAR and 0.75 FAR, respectively; and

WHEREAS, additionally, the applicant represents that there are 18 homes on an adjacent block along Ryder Street (Block 7862) with an FAR of 0.66 or greater, with 12 homes ranging from 0.72 FAR to 1.12 FAR; and

WHEREAS, at hearing, the Board directed the applicant to clarify the amount of floor area proposed in the attic; and

WHEREAS, in response, the applicant submitted a revised statement, which confirmed the location and amount of floor area proposed in the attic; and

234-13-BZ

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; and

WHEREAS, the Board 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; and

WHEREAS, the applicant asserts that the proposal is the minimum variance necessary to afford relief; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; 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 73-621; 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 and 73-621, to permit, within an R3-2 zoning district, the conversion (from a two-family residence to a single-family residence) and enlargement of an existing residential building, which does not comply with the zoning requirements for FAR, front yard, and rear yard, contrary to ZR §§ 23-141, 23-45, and 23-47; *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 February 19, 2014"- Twelve (12) 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 2,544.02 sq. ft. (0.66 FAR), a front yard with a minimum depth of 9'-11", a rear yard with a minimum depth of 24'-11", and side yards with minimum widths of 5'-0" and 10'-10½", as 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 73-70; and

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

A true copy of resolution adopted by the Board of Standards and Appeals, March 4, 2014.

Printed in Bulletin No. 10, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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, March 4, 2014.

***The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vo. 99, dated April 3, 2014.**

