

**348-12-A & 349-12-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Starr Avenue Development LLC, owner.

SUBJECT – Application December 28, 2012 – Proposed construction of two one-family dwellings located within the bed of a mapped street, contrary to General City Law, Section 35. R2 zoning district.

PREMISES AFFECTED – 15 & 19 Starr Avenue, north side of Starr Avenue, 248.73 east of intersection of Bement Avenue and Starr Avenue, Block 298, Lot 67, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**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 Montanez .....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated July 11, 2013, acting on Department of Buildings Application Nos. 520112789 and 520112798, read in pertinent part:

Proposed construction located within the bed of a mapped street is contrary to Section 35 of the General City Law (Lot 67 and 68);

Proposed new building has bulk non-compliances resulting from the location of such mapped street (Lot 67); and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, and then to decision on February 11, 2014; and

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

WHEREAS, this is an application to allow the construction of two three-story, one-family residences, with two parking spaces, which will be partially located in the bed of Hartford Avenue, a mapped but unbuilt street; and

WHEREAS, the subject site is located on the north side of Starr Avenue, approximately 139.96 feet west of the intersection of Starr Avenue and Oakland Avenue, within an R2 zoning district; and

WHEREAS, the applicant states that the subject zoning lots will be created through the apportionment of existing Lot 67; proposed (new) Lot 67 will be 40 feet in width and 128.12 feet in depth, with a lot area of 5,108 sq. ft.; proposed Lot 68 will be 40 feet in width and 127.7 feet in depth, with a lot area of 5,074 sq. ft.; and

WHEREAS, the applicant states that three additional zoning lots will also be created through the apportionment; these lots are not subject to the instant application because they are not located within the bed of Hartford Avenue; and

WHEREAS, by letter dated February 22, 2013, the Fire Department states that it has reviewed the proposal and offers no objections; and

WHEREAS, by letter dated February 13, 2013, the Department of Environmental Protection (“DEP”) states that: (1) there is an existing 6-inch diameter private sanitary sewer, and an eight-inch diameter City water main in the bed of Hartford Avenue, starting north of the subject site; and (2) City Drainage Plan No. PRD-1B & 2B, Sheet 10 of 14, dated November of 1968, for the above referenced location calls for a future 10-inch diameter sanitary sewer and a 12-inch storm sewer crossing the above referenced development and flowing towards Starr Avenue and Drainage Plan No. PRD-E, sheet 2 of 3, dated May of 1973, calls for a future 10-inch diameter sanitary sewer and a 12-inch diameter storm sewer, starting northerly of the proposed development and flowing towards Whitewood Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) a 32-foot wide sewer corridor in the bed of Hartford Avenue along Lot 68 for the installation, maintenance, and/or reconstruction of the future 10-inch diameter sanitary sewer and the 12-inch diameter storm sewer; and (2) if a corridor is not possible, the applicant has the option to amend the drainage plan; and

WHEREAS, in response to DEP’s request, by letter dated March 10, 2013, the applicant asserts that the requested easement would eliminate an entire house and essentially result in a taking of the property; and

WHEREAS, the applicant also contends that the owner should not have to bear the expense of having to amend the City’s drainage plan; and

WHEREAS, by letter dated January 2, 2014, DEP states that: (1) the applicant must establish a \$5,000 security deposit along with the application for the proposed amendment to ensure the completion of the necessary amendments to the Drainage Plan for the above referenced location; and (2) after Board approval, the application will be accepted for a sewer connection request for the above referenced location and the House Connection Proposal can be certified with a condition No Certificate of Inspection will be issued until the Drainage Plan is amended; and

WHEREAS, by correspondence dated March 13, 2013, the Department of Transportation (“DOT”) requires that the applicant build a cul de sac at the dead end of Hartford Avenue since it is more than 300 feet to the closet intersection; DOT notes that the cul de sac must comply with American Association of State Highway and Transportation Officials (“AASHTO”) standards; in addition, DOT requests that the drawings for the cul de sac be submitted to DOT for approval; and

WHEREAS, by letter dated March 13, 2013, DOT states that according to the Staten Island Borough President’s Topographical Bureau, Hartford Avenue

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between Hartford Avenue between Starr Avenue and Whitewood Avenue is a mapped street to a 50-foot width on the Final City Map; and

WHEREAS, DOT notes that the City does not have title to the mapped street, but there is a Corporation Counsel Opinion of Dedication, for Hartford Avenue from a point approximately 126 feet north of Starr Avenue to Whitewood Avenue to 44 to 45 feet as in use dated August 11, 1992;

WHEREAS, by letter dated October 22, 2013, in response to DOT's request, the applicant provided two alternate site plans; the first site plan depicts the cul de sac requested by DOT in its March 13, 2013 letter; the applicant states that to provide the requested cul de sac would result in unbuildable lots; the second plan depicts a hammerhead turnaround, which the applicant states is also impractical as it would result in a significant paved area that would greatly diminish the usable rear yard of the proposed buildings, as well as impact the existing home located on Lot 153; and

WHEREAS, the Board disagrees with DOT that the cul de sac is necessary for the following reasons: (1) the existing condition along Hartford Avenue will remain unchanged as a result of the proposed construction; (2) the proposed homes will have legal access from Starr Avenue; and (3) both a cul de sac and a hammerhead turnaround would significantly affect the usability of the homes' yards; and

WHEREAS, further, the Board notes that DOT has not represented that construction within the bed of Hartford Avenue would either conflict or interfere with the its Capital Improvement Program; and

WHEREAS, the Board notes that pursuant to GCL Section 35, the Board may authorize construction within the bed of the mapped street subject to reasonable requirements ; and

WHEREAS, the Board notes that pursuant to ZR § 72-01-(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, consistent with GCL § 35 and ZR § 72-01-(g), the Board finds that applying the bulk regulations across the portion of the subject lot within the mapped street and the portion of the subject lot outside

the mapped street as if the portions were a lot unencumbered by a mapped street is both reasonable and necessary to allow the proposed construction; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved*, that the Board modifies the decisions of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application Nos. 520112789 and 520112798 by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "Received January 21, 2014" – one (1) sheet; and *on further condition*:

THAT DOB will review and approve the plans as though the site (Block 298, Tentative Lots 67 and 68) were two zoning lots;

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt street were not mapped;

THAT the applicant will file for the DEP amended drainage plan prior to obtaining a permit at DOB;

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 DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will 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.

THAT DOB will not issue a Certificate of Occupancy until the Department of Environmental Protection has signed off on the amended drainage plan.

Adopted by the Board of Standards and Appeals on February 11, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, February 11, 2014.**

**Printed in Bulletin No. 7, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

