

**92-13-BZ & 93-13-BZ**

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

SUBJECT – Application March 21, 2013 – Variance (§72-21) to permit the construction of two semi-detached one-family dwellings, contrary to required rear yard regulation (§23-47). R3-1(LDGMA) zoning district.

PREMISES AFFECTED – 22 and 26 Lewiston Street, west side of Lewiston Street, 530.86 feet north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTIONS** –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 14, 2014, and acting on Department of Buildings Application No. 520122162 reads, in pertinent part:

ZR 23-45 – Front yard is deficient (less than 15 feet); and

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 14, 2014, and acting on Department of Buildings Application No. 520122171 reads, in pertinent part:

ZR 23-45 & 23-47 – Front yard (less than 15 feet) and rear yard (less than 30 feet) are deficient; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-1 zoning district within a Lower Density Growth Management Area, the construction of two semi-detached, two-story, single-family homes that do not comply with the underlying zoning district regulations for front and rear yards, contrary to ZR §§ 23-45 and 23-47; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, with continued hearings on December 17, 2013, January 28, 2014, and March 4, 2014, and then to decision on March 25, 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 2, Staten Island, recommends disapproval of this application; and

WHEREAS, certain members of the surrounding community submitted testimony in opposition to the application, citing concerns about the proposal’s impact on neighborhood property values, natural light, and ventilation; and

WHEREAS, the subject site is located on the west side of Lewiston Street, approximately 531 feet north of Travis Avenue, in an R3-1 zoning district within a Lower Density Growth Management Area; and

WHEREAS, the site, which is vacant, has approximately 104 feet of frontage along Lewiston Street and 6,654 sq. ft. of lot area; and

WHEREAS, the applicant proposes to subdivide the site into two zoning lots (corresponding to Tentative Tax Lots 238 and 239), and on each construct a two-story, single-family semi-detached home; and

WHEREAS, Tentative Lot 238 will have approximately 66 feet of frontage along Lewiston Street and 3,086 sq. ft. of lot area; the home on Tentative Lot 238 will have 1,538 sq. ft. of floor area (0.49 FAR) (a maximum of 1,710.5 sq. ft. of floor area (0.6 FAR) is permitted); a front yard with a non-complying depth of 9’-3” (a front yard with a minimum depth of 15’-0” is required); a side yard with a minimum width of 8’-0” along the southern lot line, and no side yard along the northern lot line, where the building will attach to the new building to be constructed on Tentative Lot 239 (one side yard with a minimum width of 8’-0” is required); a rear yard with a depth of 30’-0” (a rear yard with a minimum depth of 30’-0” is required); a perimeter wall height of 21’-6” (the maximum permitted perimeter wall height is 26’-0”); and a total height of 29’-6” (the maximum permitted total height is 35’-0”); and

WHEREAS, the Board notes that, initially, the proposed home for Tentative Lot 238 provided a complying front yard, but included a rear yard depth of 26’-0” and a floor area of approximately 1,616 sq. ft. (0.47 FAR); however, through the hearing process, the lot area and floor area were reduced and the rear yard waiver was replaced with a front yard waiver request; and

WHEREAS, Tentative Lot 239 will have approximately 48 feet of frontage along Lewiston Street and 3,568 sq. ft. of lot area; the home on Tentative Lot 239 will have 1,538 sq. ft. of floor area (0.43 FAR) (a maximum of 1,617 sq. ft. of floor area (0.6 FAR) is permitted); a front yard with a non-complying depth of 9’-3” (a front yard with a minimum depth of 15’-0” is required); a side yard with a width of 23’-0” along the northern lot line, and no side yard along the southern lot line, where the building will attach to the new building to be constructed at Tentative Lot 238 (one side yard with a minimum width of 8’-0” is required); a rear yard with a non-complying depth of 20’-0” (a rear yard with a minimum depth of 30’-0” is required); a perimeter wall height of 21’-6” (the maximum permitted perimeter wall height is 26’-0”); and a total height of 29’-6” (the maximum permitted total height is 35’-0”); and

WHEREAS, the Board notes that, initially, the proposed home for Tentative Lot 239 provided a complying front yard, but included a rear yard depth of 10’-7” and a floor area of approximately 1,616 sq. ft. (0.50 FAR); however, through the hearing process, the floor area was reduced, the proposed front yard waiver was added, and the rear yard depth was increased from 10’-7” to 20’-0”;

WHEREAS, accordingly, in order to construct both homes at the site, the applicant seeks a variance to allow the proposed front yards, contrary to ZR § 23-45, and the proposed rear yard on Tentative Lot 239, contrary to ZR § 23-47; and

WHEREAS, the applicant states that the site’s large size, shallow depth, and trapezoidal shape are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in

**92-13-BZ & 93-13-BZ**

compliance with underlying zoning regulations, in accordance with ZR § 72-21(a); and

WHEREAS, the applicant asserts that the site's 6,654 sq. ft. of lot area makes it significantly larger than the majority of sites in the surrounding area; specifically, the applicant states that of the surrounding 160 sites, only ten sites (approximately six percent) had a lot area greater than 6,000 sq. ft. and the average lot area was 3,562 sq. ft.; and

WHEREAS, as such, the applicant asserts that the proposed subdivision of the site into two zoning lots with lot areas of 3,086 sq. ft. and 3,568 sq. ft. is consistent with the prevailing lot size within the surrounding area; and

WHEREAS, the applicant states that the site has a lot depth that varies from approximately 92 feet along the southern boundary to approximately 41 feet along the northern boundary; and

WHEREAS, the applicant states that the varying lot depth is a direct result of the angle of Lewiston Street, which cuts diagonally and renders the site trapezoidal in shape; and

WHEREAS, the applicant represents that the depth and shape of the site are unique in the surrounding area, and submitted an area study to support this representation; and

WHEREAS, the applicant states that, according to the study, there are no other sites that have similar characteristics (shallow depth and trapezoidal shape) within 400 feet of the site; and

WHEREAS, the applicant also notes that the site's size and shape are historic and not the result of a subdivision from any lots within Block 2370; rather, the applicant submitted evidence demonstrating that the site has always been owned separately from the adjacent lots on Block 2370 and was created in its current form via subdivision of Block 2371, Lot 152 (which is separated from the site and Block 2370 by Lewiston Street); and

WHEREAS, the applicant asserts that, together, the lot size, shallow and varying lot depth, and trapezoidal lot shape create a practical difficulty in constructing marketable homes that provide both front and rear yards in accordance with the Zoning Resolution; and

WHEREAS, the applicant also notes that the site is ineligible for the shallow lot rear yard adjustments set forth in ZR § 23-52, because the site is not less than 70 feet in depth at all points<sup>1</sup>; as such, the applicant states that although the Zoning Resolution contemplates as-of-right relief for a shallow lot, the site is unable to take advantage of it; and

WHEREAS, the applicant examined the feasibility of the following as-of-right residential options for the site, both of which involve the development of the site without subdivision: (1) a single, detached two-family home with approximately 2,192 sq. ft. of floor area (0.33 FAR); and (2) a single, detached single-family home with approximately 1,818 sq. ft. of floor area (0.27 FAR); and

WHEREAS, the applicant asserts that both scenarios resulted in significant underutilization of the

permitted FAR (0.5) for the site; the applicant also notes that, based on its area study, only ten of the surrounding 160 sites have an FAR of less than 0.5 and the average FAR is 0.63; in contrast, the proposal—which has a combined floor area of 3,076 sq. ft. (0.46 FAR)—is relatively modest; and

WHEREAS, further, the applicant notes that a detached two-family home would be out of character with the surrounding area, where 68 percent of the homes are single-family homes, and discordant with the character of Lewiston Street, where 70 percent of the homes are single-family homes; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return or a result in a habitable home; and

WHEREAS, as noted above, in addition to the proposal, the applicant explored the financial feasibility of developing the site with a single, detached two-family home and with a single, detached single-family home; and

WHEREAS, based on the analysis, the applicant represents that only the proposal will result in habitable homes that: (1) are consistent with the surrounding community; and (2) will yield a reasonable return; and

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

WHEREAS, the applicant represents that, per ZR § 72-21(c), the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by low rise detached and semi-detached one- and two-family dwellings; and

WHEREAS, the applicant notes that the use is permitted as-of-right in the subject R3-1 district; and

WHEREAS, as to bulk, the applicant states that the proposal's floor area, wall and building height, and rear and side yards are well within the district parameters; and

WHEREAS, the applicant states that the proposal's impact on adjacent uses is minimal; and

WHEREAS, the applicant notes that north of the site is a generous side yard with a width of 23'-0" where a width of only 8'-0" is required, and beyond that, a cul-de-sac, south of the site is a complying side yard (driveway) and a series of attached dwellings, east of the site (across Lewiston Street) are a series of single-family homes, and west of the site, are a series of detached, single-family homes fronting on Beard Street; and

WHEREAS, the Board acknowledges that certain immediate neighbors expressed opposition to the proposal, citing concerns about natural light and ventilation to their home due to the reduced yards; and

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<sup>1</sup> This interpretation was affirmed by the Board in BSA Cal. No. 47-12-A (22 Lewiston Street, Staten Island).

**92-13-BZ & 93-13-BZ**

WHEREAS, the Board notes, however, that these homes are located on rectangular, deep lots with complying rear yards and that the proposal was modified to eliminate the rear yard waiver for Tentative Lot 238 and increase the depth of the rear yard at Tentative Lot 239 from 10'-7" to 20'-0", resulting in a distance between the proposed homes and the neighboring homes that varies from approximately 50 feet to approximately 60 feet; and

WHEREAS, as such, the Board finds that the proposal does not negatively impact on the neighboring properties to the west; and

WHEREAS, likewise, the Board finds that the impact of the front yard waiver upon adjacent uses along Lewiston Street is minimal; and

WHEREAS, the applicant states that because Lewiston Street runs diagonally, nearly all homes along it have a varying front yard depth; the effect is that the streetscape has an irregular quality; and

WHEREAS, accordingly, the proposed front yard contributes to the diversity of the Lewiston Street streetscape; and

WHEREAS, further, the applicant states that the front yard waiver is mitigated by the amount of open space being provided on the site and the proposal's overall consistency with the neighboring use, bulk, and aesthetics; 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; and

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

**A true copy of resolution adopted by the Board of Standards and Appeals, March 25, 2014.**

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To Applicant  
Fire Com'r.  
Borough Com'r.**

Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II 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 under ZR § 72-21 to permit, in an R3-1 zoning district within a Lower Density Growth Management Area, the construction of two semi-detached, two-story, single-family homes that do not comply with the underlying zoning district regulations for front and rear yards, contrary to ZR §§ 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 18, 2014" - (7) sheets; and *on further condition*:

THAT the parameters of the home on Tentative Lot 238 will be as follows: two stories, a maximum floor area of 1,537 sq. ft. (0.49 FAR); a minimum front yard depth of 9'-3"; a minimum rear yard depth of 30'-0"; one side yard with a minimum width of 8'-0" along the southern lot line; a maximum perimeter wall height of 21'-6"; and a total building height of 29'-6", as illustrated on the BSA-approved plans;

THAT the parameters of the home on Tentative Lot 239 will be as follows: two stories, a maximum floor area of 1,537 sq. ft. (0.43 FAR); a minimum front yard depth of 9'-3"; a minimum rear yard depth of 20'-0"; one side yard with a minimum width of 23'-0" along the northern lot line; a maximum perimeter wall height of 21'-6"; and a total building height of 29'-6", 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 objection(s);

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

THAT substantial construction will be completed pursuant to ZR § 72-23;

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, March 25, 2014.

