

11-06-BZ

APPLICANT – The Law Office of Frederick A. Becker for Miriam Schubert and Israel Schubert, owner.

SUBJECT – Application January 18, 2006 – Under Z.R. § 73-622 to permit the enlargement to an existing single family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio and rear yard (Z.R. § 23-141 and § 23-47).

PREMISES AFFECTED – 1245 East 22nd Street, East 22nd Street between Avenue K and Avenue L, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman, Fredrick A. Becker and David Shtierman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 12, 2006 acting on Department of Buildings Application No. 302039336, reads, in pertinent part:

- “1. Proposed floor area contrary to ZR 23-141.
- 2. Proposed open space ratio contrary to ZR 23-141.
- 3. Proposed rear yard contrary to ZR 23-47.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, as a threshold matter in this application, the Board notes that when the case was initially filed, the applicant essentially proposed a full demolition of the existing building, with only a single wall being maintained; and

WHEREAS, subsequently, the applicant indicated that even this single wall would not remain; instead, the only elements of the existing building proposed to be retained were certain sub-grade foundational elements; and

WHEREAS, at hearing, the Board expressed concern about this proposal, and noted that the text of ZR § 73-622 allows enlargements only of existing buildings, not what is better characterized as new

ground-up development; and

WHEREAS, accordingly, the Board informed the applicant that the proposal should be modified to reflect the retention of a reasonable portion of the existing residence; and

WHEREAS, the Board notes that the same applicant brought another ZR § 73-622 application under BSA Cal. No. 128-05-BZ, which raised the same issue; and

WHEREAS, for the reasons set forth in the resolution issued under Cal. No. 128-05-BZ, also decided the date hereof, the Board rejects all of the applicant’s arguments on this issue; and

WHEREAS, the Board notes that the applicant subsequently revised its proposal to reflect the retention of a significant amount of the existing residence, such that the Board concludes that both the plain language and the intent of the special permit provision is respected; and

WHEREAS, specifically, the applicant revised the plans to indicate that portions of the walls would be retained from the basement up to the second floor and that some parts of the floor joists, and therefore the level of the floors, would be maintained; and

WHEREAS, a public hearing was held on this application on May 9, 2006, after due notice by publication in *The City Record*, with continued hearings on June 20, 2006 and July 25, 2006, and then to decision on August 15, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and
WHEREAS, the subject lot is located on the east side of East 22nd Street, between Avenue K and Avenue L; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 2,367.24 sq. ft. (0.59 FAR) single-family dwelling; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,367.24 sq. ft. (0.59 FAR) to 4,116.92 sq. ft. (1.03 FAR); the maximum floor area permitted is 2,000 sq. ft.; and

WHEREAS, the proposed enlargement will decrease the open space from 3,129.3 sq. ft. to 2,289 sq. ft. (the minimum required open space is 3,000 sq. ft.) and decrease the open space ratio from 132.2 percent to 55.6 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the proposed enlargement will maintain one 5’-4” side yard and reduce one side yard from 9’-4 ½” to 8’-0” (the minimum side yard

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requirement is a total of 13'-0" with a minimum width of 5'-0"); and

WHEREAS, the proposed enlargement will reduce the rear yard from 32'-7 1/2" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the enlargement will reduce the front yard from 30'-0" to 15'-0" (the minimum front yard required is 15'-0"); and

WHEREAS, the Board notes that the proposed wall height and overall height complies with applicable R2 district requirements; and

WHEREAS, the Board notes that the proposed FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, nonetheless, the Board required the applicant to remove the porch from the plans, so that any proposed porch may be approved by DOB; and

WHEREAS, accordingly, 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 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 § 73-622 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 §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and

A true copy of resolution adopted by the Board of Standards and Appeals, August 15, 2006.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

marked "Received August 1, 2006"-(5) sheets and "August 15, 2006"-(7) sheets; and *on further condition:*

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,116.92 sq. ft., a total FAR of 1.03, a street wall height of 22'-1 1/2", and a total height of 34'-10 1/2", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled A-3, A-4, A-5, and A-7A, dated August 15, 2006 and A-7, dated August 1, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT DOB shall review and approve the size and location of the front and rear porches (notwithstanding the illustration of any porch element on the BSA-approved plans);

THAT DOB shall review and approve the location of any garage;

THAT the use and layout of the cellar shall be as approved by DOB;

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

Adopted by the Board of Standards and Appeals, August 15, 2006.