

2016-4168-BZ
CEQR #16-BSA-107R

APPLICANT – Law Office of Steven Simicich, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application April 8, 2016 – Variance (§72-21) to permit the construction of single family detached home, contrary to side yard and minimum distance regulation (ZR §23-461c). R3A zoning district.

PREMISES AFFECTED – 94 Elm Street, Block 158, Lot 84, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated March 16, 2016, acting on Application No. 520263223 reads in pertinent part:

“ZR 23-461(c): The proposed side yard and open area requirements are not provided and contrary to ZR 23-461(c) in that the proposed side yard is less than 8 feet required between buildings containing residences”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district and within a Lower Density Growth Management Area, the construction of a two story plus cellar single-family detached residence that does not comply with minimum open area distance between buildings and required side yards, contrary to ZR § 23-461(c); and

WHEREAS, a public hearing was held on this application on March 7, 2017, after due notice by publication in *The City Record*, with continued hearing on April 4, 2017, and then to decision on that date; and

WHEREAS, Commissioner Montanez performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Elm Street, between Richmond Terrace and Henderson Avenue, in an R3A zoning district and a Lower Density Growth Management Area, on Staten Island; and

WHEREAS, the site has approximately 23 feet of frontage along Elm Street, 2,672 square feet of lot area, and is currently vacant; and

WHEREAS, the applicant proposes to develop the subject site with a two-story, plus cellar detached single-family residence with 1,600 square feet. of floor area and a floor area ratio (“FAR”) of 0.60, a 3’-0” side yard along the southern lot line resulting in a 6’-7” open area between the subject proposed residence and the residence immediately to the south and a 5’-0” side yard on the north side of the site resulting in a 5’-2”

open area between the subject proposal and the residence immediately to the north, contrary to ZR § 23-461(c); and

WHEREAS, the applicant represents that while the subject site meets the minimum lot area requirements for a single-family detached residence pursuant to ZR § 23-32, it does not meet the minimum lot width requirement of that same section (25 feet), yet the subject proposal is permitted, pursuant to ZR § 23-33 because the subject zoning lot was owned separately and individually from all other adjoining tracts of land on December 8, 2005 and will be so separately owned on the date of application for a building permit; and

WHEREAS, at the subject site, pursuant to ZR § 23-461(c)(1), an open area with a minimum total width of eight feet is required between buildings containing residences on adjacent zoning lots; and

WHEREAS, additionally, pursuant to ZR § 23-461(c)(2), where such open area requirements result in side yards totaling more than 13 feet on the subject zoning lot, the width of such side yards may be reduced to not less than five feet, provided that the total width of both side yards on the subject zoning lot is at least 13 feet; and

WHEREAS, the applicant represents that developing a residence on the subject lot, which is only 23 feet wide, in compliance with ZR § 23-461(c) would result in an uninhabitable residence, only 10 feet; and

WHEREAS, therefore, in order to develop the property as proposed, the applicant seeks a waiver for the minimum open area distance between buildings requirements of ZR § 23-461(c)(1) and the side yard requirements of ZR § 23-461(c)(2); and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the narrowness of the lot and (2) the close proximity of adjacent residential buildings to the side lot lines; and

WHEREAS, the applicant has provided the Board with a uniqueness study of lots on the subject block as well as the block immediately east of the subject site located in an R3A zoning district (the “Study Area”), consisting of 179 total tax lots, demonstrating that eight other vacant lots exist within the Study Area; five of the eight lots are held under common ownership with an adjacent lot and the remaining three are wider than the subject site with widths of either 50 feet or 70 feet; and

WHEREAS, in addition, the applicant notes that the residence to its immediate south is located only 3’-7” from the subject site’s southern side lot line and the residence to its immediate north is located only 2 inches from the subject site’s northern lot line, meaning that strict compliance with ZR § 23-461(c) would result in a residence that would be too narrow to be practically inhabited; and

WHEREAS, based on the above, the Board finds that the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable

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zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulation will result in a habitable home; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant represents that the surrounding area has a mix of residence types; that the proposed detached single-family residence is consistent with the mix of existing single- and two-family detached and semi-detached residences in the neighborhood; and that the proposed 5 foot reduction in side yard width and 1'-5" and 2'-10" reductions in open area between the subject proposed residence and residences located on adjacent lots will not impair the light and air of those adjacent residences; and

WHEREAS, the applicant provided the Board with a 1937 Sanborn Map showing that a residence previously occupied the subject site while residences existed on adjoining lots and that narrow open areas existed among the three residences, existing, and therefore reconstructing a home on the subject site will only replicate a historical condition; and

WHEREAS, the applicant additionally agreed to equip the entire subject proposed residence with an automatic sprinkler system to mitigate concerns of fire spread due to the close proximity of the subject proposal and its neighbors; and

WHEREAS, the Board finds that this action will not alter the essential character of the neighborhood, nor impair the use of development of adjacent properties, nor will it be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the practical difficulties and unnecessary hardship are inherent in the narrow width of the site and that the owner or predecessor has not created any of these conditions; and

WHEREAS, specifically, the applicant submitted a 1917 Sanborn Map showing that the site existed at its current narrow width and the site has not been subdivided since then, therefore the narrowness was not self-created; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but was due to the peculiarities of the site; and

WHEREAS, the Board also finds that this

A true copy of resolution adopted by the Board of Standards and Appeals, April 4, 2017.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

proposal is the minimum necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR, Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-107R, dated April 8, 2016; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes each and every one of the required findings under ZR § 72-21 to permit, in an R3A zoning district, the construction of a two story plus cellar single-family detached residence that does not comply with open area between buildings and side yard requirements, contrary to ZR § 23-461(c); *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 22, 2017"- Twelve (12 sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: side yards with minimum widths of 5 feet and 3 feet, as indicated on the BSA-approved plans;

THAT the subject building shall be fully sprinklered, as indicated on the BSA-approved plans;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT the above conditions shall appear on the Certificate of Occupancy;

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; 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, April 4, 2017.

