

**2017-43-BZ**  
**CEQR #17-BSA-088R**

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

SUBJECT – Application February 10, 2017 – Variance (§72-21) to permit the construction of a single family, detached home contrary to ZR §23-461c (Side Yard and Open Area). R3A (Special Hillside Preservation District (SHPD) Lower Density Growth Management Area (LDGMA) zoning district.

PREMISES AFFECTED – 140 Hendricks Avenue, Block 44, Lot 19, 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 Sheta and Commissioner Scibetta.....4

Negative: .....0

Absent: Commissioner Otley-Brown.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 18, 2017, acting on DOB Application No. 520286850 reads in pertinent part:

1. 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 eight (8) feet required between buildings containing residences; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R3A zoning district and in the Special Hillside Preservation District and Lower Density Growth Management Area, the construction of a single-family residence that does not comply with side yard and open area regulations, contrary to ZR § 23-461(c); and

WHEREAS, a public hearing was held on this application on October 30, 2018, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Scibetta 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 south side of Hendricks Avenue, between Jersey Street and Bismark Avenue, in an R3A zoning district and in the Special Hillside Preservation District and Lower Density Growth Management Area, on Staten Island; and

WHEREAS, the site has approximately 25 feet of frontage, 100 feet of depth, 2,500 square feet of lot area and is vacant; and

WHEREAS, the applicant submits that the site was previously occupied by a residential building that was demolished pursuant to permits in 1987; and

WHEREAS, the applicant proposes to construct a two- (2) story with cellar and one- (1) car garage single-

family detached residence resulting in a residence with 15 feet of width and two (2) side yards, each measuring five (5) feet in width; and

WHEREAS, at the subject site, an open area with a minimum total width of eight (8) feet between buildings containing residences on adjacent zoning lots is required pursuant to ZR § 23-461(c)(1) and, pursuant to ZR § 23-461(c)(2), when the open area requirement of ZR § 23-461(c)(1) results in side yards totaling more than 13 feet, the width of such side yards may be reduced to not less than five (5) feet so long as the total width of both side yards is at least 13 feet; and

WHEREAS, accordingly, the applicant seeks the requested relief; and

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), that the history of the development of the site with a residential building, its vacancy, its interior location and its adjacency to buildings containing residences located in close proximity to their common side lot lines are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; specifically, the applicant states that absent the requested relief, a residence only 12 feet in width can be constructed at the site as-of-right, and such a narrow house is inconsistent with the surrounding area; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study of vacant interior lots located within the subject R3A zoning district bound by Layton Avenue to the north, Corson Avenue to the south, Westervelt Street to the east and Jersey Street to the west (the “Uniqueness Study Area”) demonstrating that, of the 26 other vacant interior lots in the Uniqueness Study Area (not including the subject site), 4 vacant lots (or 15 percent) are similarly situated as the subject site, that is, they are interior lots, have a width of 25 feet or less, are not held in common ownership with an adjacent lot and, accordingly, can only be developed with a residential building having maximum width of 12 feet; and

WHEREAS, the applicant also provided a 1917 Sanborn map, showing the prior development of the site with a two- (2) story residential building and buildings containing residences to its immediate east and west in approximately the same location and orientation as those adjacent buildings are located today, suggesting that the side yards of the adjacent residential buildings are lawful non-compliances in that they pre-date the 1961 Zoning Resolution; and

WHEREAS, according to a site survey and plans provided by the applicant, the residence located immediately to the east of the subject site is situated approximately six (6) inches from the side lot line it shares with the subject site and the residence located immediately to the west of the subject site is situated approximately 0.2 feet from the side lot line it shares with the subject site; and

WHEREAS, in light of the foregoing, the Board finds that the history of the residential development of

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the site, its vacancy, interiority and adjacency to buildings containing residences located in close proximity to their common side lot lines create unnecessary hardship and practical difficulty in developing the site in strict compliance with the underlying bulk provisions of the Zoning Resolution; 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 regulations will result in a habitable home, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant states that the subject proposal will not alter the essential character of the neighborhood and, in support of that contention, submitted a study of the widths of single- or two-family residences located on 25 foot wide lots in the subject R3A zoning district bound by Scribner Avenue to the north, Layton Avenue to the south, Westervelt Avenue to the east and Jersey Street to the west (the "Neighborhood Study Area") demonstrating the presence of 94 such dwellings that range in width from 12 feet to 25 feet as follows: 28 percent (26 lots) have dwellings with a width of 21 feet; 22 percent (21 lots) have dwellings with a width of 22 feet; 15 percent (14 lots) have dwellings with a width of 16 feet; 9 percent (8 lots) have a width of 20 feet; 7 percent (7 lots) have a width of 23 feet; 4 percent (4 lots) have a width of 14 feet; 4 percent (4 lots) have a width of 18 feet; 3 percent (3 dwellings) have a width of 17 feet; 2 percent (2 lots) have a width of 12 feet; and 1 percent (1 lot each) have a width of 13.5 feet, 15 feet, 19 feet, 24 feet or 25 feet; and

WHEREAS, the applicant additionally submits that the redevelopment of the site with a residential occupancy as it was occupied from at least, 1917 to 1987, would be of benefit, rather than detriment, to the public welfare because the site is currently overgrown and unsightly and that it would not impair the development of adjacent properties because such properties are already developed with residential buildings and do not have any windows facing the subject site; and

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

WHEREAS, the applicant submits, and the Board finds, that, per ZR § 72-21(d), the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the applicant submits, and the Board finds, that the subject proposal is the minimum necessary

to afford the owner relief pursuant to 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 Type II action noted in the CEQR Checklist No. 17-BSA-088R, dated February 10, 2017; 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, §§ 5-02(a) and 5-02(b)(2) 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, within an R3A zoning district, the construction of a detached single family home that does not comply with side yards and open area, contrary to ZR § 23-461(c); *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 30, 2018– Sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: two (2) side yards, each five (5) feet in width, as reflected on the BSA-approved plans;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-43-BZ"), shall be obtained within four (4) years, by January 15, 2023;

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; 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, January 15, 2019.

**A true copy of resolution adopted by the Board of Standards and Appeals, January 15, 2019.  
Printed in Bulletin No. 4, Vol. 104.**

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

