2018-99-BZ
CEQR #18-BSA-143M
APPLICANT – Sheldon Lobel, P.C., for Shawn Hope, owner.
SUBJECT – Application May 25, 2018 – Variance (§72-21) to permit the construction of a five-story and basement, two-family building contrary to ZR §23-32 (Minimum Lot Area or Lot Width for Residences). R7A zoning district.
PREMISES AFFECTED – 275 Pleasant Avenue, Block 1708, Lot 25, Borough of Manhattan.
COMMUNITY BOARD #11M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta…….5
Negative:…….....……0
THE RESOLUTION –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated April 27, 2018, acting on Department of Buildings ("DOB") Application No. 122132101 reads in pertinent part:

> ZR 23-32; ZR 23-33: New Building Application filed for undersized lot is contrary to ZR 23-32 and does not comply with ownership requirement of ZR 23-33, therefore this application is referred to the BSA; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R7A zoning district, the construction of a five-story plus basement two-family residence that does not comply with the minimum requirement for lot area and lot width, contrary to ZR §§ 23-32 and 23-33; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with a continued hearing on February 26, 2019, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of Pleasant Avenue, between East 115th Street and East 114th Street, in an R7A zoning district, in Manhattan; and

WHEREAS, the site has approximately 13 feet of frontage along Pleasant Avenue, a depth of 74 feet, 941 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the site with a five-story plus basement Use Group 2 two-family residential building containing 3,512 square feet of floor area and a floor area ratio ("FAR") of 3.73; and

WHEREAS, in the subject zoning district, no residence is permitted on a zoning lot with a total lot area of less than 1,700 square feet and total lot width of less than 18 feet pursuant to ZR § 23-32; and

WHEREAS, pursuant to ZR § 23-33, a single-family detached reside or one single- or two-family residence may be developed on a lot with less than the prescribed minimum lot area or lot width that does not comply with the provisions of ZR § 23-32 if it was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit and, if developed as a two-family residence, it meets the applicable density requirement of the zoning district in which such zoning lot is located; and

WHEREAS, two-family residences are permitted as-of-right in an R7A zoning district pursuant to ZR § 22-12 and a two-family dwelling complies with the applicable density requirement, set forth in ZR § 23-22, which defines the maximum number of dwelling units at the site as the maximum residential floor area permitted on the zoning lot divided by 680; and

WHEREAS, at the subject site, the maximum residential floor area permitted at the site is 3,764 square feet pursuant to ZR §§ 23-15 and 23-153, which permit a maximum FAR of 4.0 for buildings containing residences located in an R7A zoning district; and

WHEREAS, accordingly, the maximum number of dwelling units permitted at the site is five, thus, the applicant's proposal of two dwelling units at the subject site meets the density requirement applicable in an R7A zoning district; and

WHEREAS, development of the site with a two-family residence is not permitted as-of-right despite its non-compliance with the minimum lot width and lot area requirements and compliance with applicable density requirements because it was not owned separately and individually from all other adjoining tracts of land on December 15, 1961; and

WHEREAS, the applicant submits that according to recorded deeds, the subject site was owned by the same party as adjacent tax lot 125, located immediately to the north of the subject site, on December 15, 1961; and

WHEREAS, in fact, the subject lot has been owned in common with tax lot 125 from at least November 17, 1955, until December 2, 1974, when the sites were acquired by the City of New York in a tax lien foreclosure action; and

WHEREAS, the sites were both subsequently deeded to the same corporation on July 15, 1976, but on September 24, 1980, they ceased to be owned in common when the City of New York re-acquired tax lot 125 alone in another tax lien foreclosure action; and

WHEREAS, the applicant represents that since that September 23, 1980, the subject lot has been owned separately and individually from all surrounding tax lots and, due to the inability to develop the subject site as-of-right pursuant to ZR § 23-33 as a result of the

history of common ownership, seeks the subject relief; and

WHEREAS, the applicant states that the site was previously developed with a residential building and provided historic Sanborn fire insurance maps of the immediate area evidencing that the subject site was occupied by a residential building from at least 1896 to 1939 and has been vacant since at least 1951; and

WHEREAS, the applicant submits that, aside from the minimum lot width and lot area requirements, the proposed development is otherwise compliant with applicable zoning regulations; and

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), the narrowness, small size and vacancy of the subject site are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study of all lots located within 1,000 feet of the premises (the "Study Area") illustrating that of the 251 other lots in the Study Area, ten lots (approximately 4 percent) have lot widths of less than 15 feet and one lot (0.4 percent) is narrower than the subject site, with a width of 12'-6.5"; 11 lots (4 percent) have less than 1,200 square feet of lot area and three lots (1 percent) have less lot area than the subject site; three lots (1 percent) have both lots widths of less than 15 feet and lot area of less than 1,200 square feet, and only one lot in the Study Area (0.4 percent) has a lot width of less than 15 feet, lot area of less than 1,200 square feet and is also vacant; and

WHEREAS, the applicant identifies that site as tax lot 125, located immediately to the north of the subject site, which the applicant represents as having been conveyed, along with tax lot 26, for development as part of a Urban Development Action Area Project ("UDAAP") as evidenced by the Agreement entered into by the City of New York and 277-279 Pleasant Avenue Corporation and recorded with the Office of City Register, New York County, against tax lots 125 and 26 located on the subject tax block 1708 at Reel 811, Page 1416, a copy of which was provided to the Board; and

WHEREAS, in addition, the Board notes that the subject tax lot has existed at its current dimensions since at least 1896, when the Sanborn fire insurance map of the immediate area indicates that it was occupied by an attached building that, since at least 1911, contained dwelling units; and

WHEREAS, in light of the foregoing, the Board finds that the narrowness, small size and vacancy of the subject lot 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 two-family dwelling, 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 because the proposed use is permitted as-of-right in the subject zoning district; that, with the exception of minimum lot width and lot area, the proposed building otherwise complies with the bulk regulations applicable in an R7A zoning district and consist of 3,512 sq. ft. square feet of floor area, 3.73 FAR, a street wall height of 62'-6" and building height of 72'-7"; and that other buildings on the same block rise to similar heights and contain more floor area than the proposed development, including the building located at the corner of East 114th Street and Pleasant Avenue, approximately 25 feet south of the subject lot, which has an FAR of approximately 4.09 and rises to an estimated height of 80 feet; and

WHEREAS, 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 that pursuant to ZR § 72-21(d) the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the president of the corporate owner of tax lot 125 provided testimony to the Board in opposition to this application, stating that the proposed development does not meet the finding of ZR § 72-21(d); and

WHEREAS, at the Board's request, the applicant provided a memorandum of law addressing whether the cessation of the common ownership of tax lots 25 and 125 is a self-created hardship that forecloses the granting of a variance and concluding that, because common ownership ceased as a result of the actions of a third party—in this case, the intervening acquisition of tax lot 125 by the City of New York in foreclosure—the hardship complained of was not created by the owner or a predecessor in title and, further, that pursuant to the language of ZR § 72-21(d) itself, "where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship"; and

WHEREAS, the Board is persuaded that the hardship complained of herein were not self-created in satisfaction of ZR § 72-21(d); and

WHEREAS, the applicant states, and the Board finds, that the subject proposal is the minimum relief required in satisfaction of ZR § 72-21(e); and

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WHEREAS, the development 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. 18BSA143M, dated June 1, 2018; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore, it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 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, in an R7A zoning district, development of a five-story plus basement two-family dwelling that does not comply with the minimum requirement for lot width and lot area, contrary to ZR §§ 23-32 an 23-33, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 26, 2019--Twelve (12) sheets"; and *on further condition*:

THAT the Board has not granted any waivers with regards to rear yard requirements at the site;

THAT Department of Buildings shall review compliance of proposed greenhouse with applicable zoning regulations relating to permitted obstructions in yards;

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

THAT a certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 2018-99-BZ") shall be obtained within four (4) years, by February 26, 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, February 26, 2019.

A true copy of resolution adopted by the Board of Standards and Appeals, February 26, 2019.
Printed in Bulletin Nos. 9-10, Vol. 104.

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