

**43-11-BZ****CEQR #11-BSA-081K**

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21<sup>st</sup> Street, Block 6826, Lot 19, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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

**THE VOTE TO GRANT –**

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta.....5  
Negative.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 12, 2011, acting on Department of Buildings Alteration Type I Application No. 320288602, reads in pertinent part:

“The proposed enlargement of the existing residence in an R3-2 zoning district:

1. Increases the degree of non-compliance with respect to one side yard and is contrary to sections 23-461 & 54-31 of the Zoning Resolution;
2. Creates non-compliance with respect to floor area and floor area ratio and is contrary to section 23-141 of the Zoning Resolution;
3. Creates non-compliance with respect to open space and lot coverage and is contrary to section 23-141 of the Zoning Resolution;
4. Creates non-compliance with respect to rear yard and is contrary to section 23-47 of the Zoning Resolution;” and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R3-2 zoning district, the enlargement of an existing three- (3) story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space, lot coverage, side yards, and rear yards contrary to Z.R. §§ 23-142, 23-461, and 23-47; and

WHEREAS, the Board notes that since the filing of this application, the Zoning Resolution has been amended and the text formerly found at ZR § 23-141, setting forth the maximum floor area ratio, minimum required open space and maximum lot coverage permitted in an R3-2 zoning district, is now found in ZR § 23-142; thus the Board treats the citation to ZR §

23-141 in DOB’s objection as a citation to ZR § 23-142; and

WHEREAS, a public hearing was held on this application on April 23, 2019, after due notice by publication in *The City Record*, with continued hearings on July 23, 2019, August 13, 2019, and November 26, 2019, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was in receipt of two form letters in support of this application; and

WHEREAS, the subject site is located on the west side of East 21<sup>st</sup> street, between Avenue R and Avenue S, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet of frontage along East 21st Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by an existing three-story plus cellar single-family detached residence; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*<sup>1</sup> of an existing *single- or two-family detached or semi-detached residence* within the following areas:

- (a) Community Districts 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special

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<sup>1</sup> Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *non-compliance*, with the applicable *bulk* regulations for *lot coverage*, *open space*, *floor area*, *side yard*, *rear yard* or *perimeter wall height* regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two-family detached or semi-detached residence* with an existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing detached single-family residence, as contemplated in

ZR § 73-622; and

WHEREAS, the existing single-family residence is a three-story plus cellar single-family detached residence with 0.64 FAR (2,575 square feet of floor area), 56.3% of open space (2,254 square feet of open space), 43.7% of lot coverage (1,746 square feet of lot coverage, two side yards with widths of 3'-9-1/2" and 9'-2-3/4", and a rear yard with a depth of 49'-9-3/4"; and

WHEREAS, the applicant proposes to enlarge the single-family detached residence resulting in a three-story plus cellar single-family detached residence with 1.0 FAR (3,987 square feet of floor area), 56.3% of open space (2,254 square feet of open space), 43.7% of lot coverage (1,746 square feet of lot coverage), two side yards with widths of 3'-9-1/2" and 9'-2-3/4", and a rear yard with a depth of 24'-10"; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (2,000 square feet of floor area) is permitted, a minimum of 65% of open space (2,600 square feet of open space) is required, a maximum of 35% lot coverage (1,400 square feet of lot coverage) is permitted, two side yards, each with minimum widths of five (5) feet and a minimum of 13 feet of total side yards are required, and a rear yard with a minimum depth of 30 feet is required pursuant to ZR §§ 23-142, 23-461, and 23-47; and

WHEREAS, the applicant proposes to enlarge the floor area at the first floor from 1,043 square feet to 1,735 square feet, the second floor from 950 square feet to 1,609 square feet, and the third floor from 582 square feet to 643 square feet; and

WHEREAS, the applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; 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 modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; 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

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Checklist No. 11BSA081K, dated April 4, 2019; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby *issue* 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 §§ 73-622 and 73-03 to *permit* the enlargement of an existing three-story plus cellar single-family detached residence that does not comply with zoning regulations for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yards contrary to Z.R. §§ 23-142, 23-461, and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked Received "September 17, 2019"- thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 1.0 FAR (3,987 square feet of floor area), a minimum of 56.3% open space (2,254 square feet of open space), a maximum of 43.7% of lot coverage (1,746 square feet of lot coverage), two side yards with minimum widths of 3'-9-1/2" and 9'-2-3/4", and a rear yard with a minimum depth of 24'-10", as illustrated on the Board-approved plans;

THAT the applicant shall clarify all changes to approved plans, between corrective work due to a fire at the site and the originally approved DOB drawings, to DOB;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 43-11-BZ"), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 7, 2024;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered

**A true copy of resolution adopted by the Board of Standards and Appeals, November 26, 2019.  
Printed in Bulletin No. 48, Vol. 104.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 26, 2019.

