

48-07-BZ

APPLICANT – Alfonso Duarte, for Jerry Trianfaffillou, owner.

SUBJECT – Application February 20, 2007 – Variance (§72-21) for the enlargement of an existing single family residence on an undersized lot which seeks to vary (§23-47) less than the required rear yard and (§23-141(b)) for lot coverage in an R2A zoning district.

PREMISES AFFECTED – 7-12 126th Street, west side 90’ south of 7th Avenue, Block 3970, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Abstain: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 26, 2007, acting on Department of Buildings Application No. 402314848, reads in pertinent part:

“Non-compliant of minimum 30’-0” required rear yard;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2A zoning district, the proposed enlargement of a two-story single-family home that does not provide the required rear yard and is contrary to ZR § 23-47; and

WHEREAS, an earlier iteration of the application required the noted rear yard waiver and a lot coverage waiver; and

WHEREAS, a public hearing was held on this application on October 23, 2007, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2007, and then to decision on January 8, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 7, Queens, recommends disapproval of the earlier iteration of the proposal, which required lot coverage and rear yard waivers, citing concerns about neighborhood character and whether the request for two waivers reflected the minimum variance; and

WHEREAS, City Council Member Tony Avella provided written testimony questioning the FAR calculations; and

WHEREAS, the site is located on the west side of 126th Street, 90 feet south of Seventh Avenue, in an R2A zoning district; and

WHEREAS, the site has a width of approximately 75 feet, a depth ranging from 70.11 feet to 52.31 feet, and a total lot area of approximately 4,590 sq. ft.; and

WHEREAS, the site comprises two lots, Lot 11 (on the northern portion of the site) and Lot 13 (on the southern portion of the site), which will be merged into a new Lot 11; and

WHEREAS, the site is currently occupied by a single-family home, built in 1935, on the northern portion of the lot and a detached garage on the southern portion of the lot; and

WHEREAS, the applicant proposes to construct a two-story enlargement to the existing home on the southern portion of the lot and to reduce the size of the existing detached garage; and

WHEREAS, the applicant initially proposed to provide for an enlargement that retained all of the existing garage and resulted in a non-complying lot coverage of 36 percent (30 percent lot coverage is the maximum permitted); and

WHEREAS, the proposed home will have the following complying parameters: 2,256 sq. ft. of floor area (0.49 FAR), a lot coverage of 30 percent, a perimeter wall height of 21’-0”, a total height of 28’-7”, and a front yard of 15’-0”; and

WHEREAS, however, the applicant proposes to provide a rear yard with a depth of 20’-0” (a minimum depth of 30’-0” is required); and

WHEREAS, the applicant states that rear yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the subject lot is shallow; and (2) the subject lot is irregularly-shaped; and

WHEREAS, as to the shallow depth, the applicant represents that the site has a range of depths from 52.31 feet along the southern lot line to 70.11 feet along the northern lot line; and

WHEREAS, the applicant represents that the requested rear yard waiver is necessary to develop the site with a viable enlargement; and

WHEREAS, specifically, the applicant represents that the lot depth cannot feasibly accommodate as of right development; and

WHEREAS, the applicant states that if a complying front yard of 15 feet and a complying rear yard of 30 feet were provided, any proposed enlargement would have an exterior depth of only approximately seven feet at the southernmost point and then reach a depth of approximately 16 feet at the center of the site; and

WHEREAS, accordingly, the applicant represents that the rear yard waiver is necessary to create an enlargement of a reasonable depth; and

WHEREAS, the applicant represents that the subject lot has the shallowest depth of any lot within a 200-ft. radius; and

WHEREAS, as to the irregular shape, the applicant states that the shape constrains a conforming development because the varying depth prohibits the provision of a uniform complying rear yard across the site; and

WHEREAS, the applicant represents that the site is one of only three such irregularly shaped lots within the 200-ft. radius; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance

48-07-BZ

with the applicable side yard regulations; and

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

WHEREAS, the Board notes that the applicant also asserted that until the rezoning of the site on September 28, 2005, from an R3-2 zoning district to an R2A zoning district, a rear yard with a depth of 20'-0" would have been permitted under the shallow lot provisions; and

WHEREAS, the Board does not find the prior zoning relevant to the proposed variance request; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development; and

WHEREAS, specifically, the applicant provided information on the six homes on the adjacent lots, which reflects a range in FAR from 0.25 to 0.55; and

WHEREAS, the applicant states that the home will remain a single-family home after the enlargement; and

WHEREAS, as to the question, raised by the Board and Council Member Avella, of whether any floor area associated with the detached garage would be included in floor area calculations, the applicant submitted a determination from DOB which states that, within the subject zoning district, up to 300 sq. ft. of floor space associated with an accessory garage may be excluded from floor area calculations; and

WHEREAS, accordingly, the revised plans provide for a single car garage with floor space of 249 sq. ft., which is not included in the floor area calculations; and

WHEREAS, in response to the Board's concerns about lot coverage and neighborhood context, the applicant reduced the size of the garage so that the lot coverage, initially proposed to be 36 percent, did not exceed the maximum permitted in the zoning district of 30 percent; and

WHEREAS, the Board agrees that the location of the enlargement on the lot and the non-complying rear yard is compatible with the neighborhood context; and

WHEREAS, the Board notes that the existing home does not provide a complying front yard on the northern portion of the site, yet the proposed enlargement will provide the required front yard; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, as noted above, the proposal complies with all R2A zoning district regulations except for the required rear yard on a portion of the lot; and

WHEREAS, further, the Board notes that during the hearing process, the applicant reduced the proposed lot coverage from 36 percent to 30 percent and agreed to demolish a portion of the existing garage; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, 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 Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, within an R2A zoning district, the proposed enlargement of a two-story single-family home that does not provide the required rear yard and is contrary to ZR § 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 27, 2007"– (11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 2,256 sq. ft. of floor area (0.49 FAR), a maximum lot coverage of 30 percent, two stories, a wall height of 21'-0", a total height of 28'-7", a rear yard with a minimum depth of 20'-0", and two parking spaces, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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

Adopted by the Board of Standards and Appeals, January 8, 2008.

A true copy of resolution adopted by the Board of Standards and Appeals, January 8, 2008.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.