

MEETING OF: February 26, 2019
CALENDAR NO.: 2018-10-BZ
PREMISES: 1238 East 26th Street, Brooklyn
Block 7643, Lot 60
BIN No. 3209365

ACTION OF 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 of the Brooklyn Borough Commissioner, dated April 26, 2018, acting on Department of Buildings (“DOB”) Application No. 321422199, reads in pertinent part:

Proposed plans are contrary to Zoning Resolution 23-141 in that the proposed Floor Area Ratio exceeds the maximum permitted;

Proposed plans are contrary to Zoning Resolution 23-141 in that the proposed Floor Area exceeds the maximum permitted;

Proposed plans are contrary to Zoning Resolution 23-141 in that the proposed Open Space Ratio is less than the minimum required;

[. . .]¹

Proposed plans are contrary to Zoning Resolution 23-461 and 23-47 in that the proposed side and rear yards are less than minimums required; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a detached single-family dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards and rear yards contrary to ZR §§ 23-141, 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record*, with continued hearings on December 11, 2018, January 15, 2019, and February 26, 2019, and then to decision on that same date; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application on condition that the floor area ratio (“FAR”) be no greater than 1.05; and

WHEREAS, the Board was in receipt of two (2) form letters in support of this application; and

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue L and Avenue M, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 30 feet of frontage, 100 feet of depth, 3,000 square feet of lot area, and is occupied by a two (2) story plus cellar and attic single-family dwelling containing 2,480 square feet of floor area (0.83 FAR), an open space ratio of 0.8 (1,980 square feet of open space), a front yard with a depth of 15’-1”, a rear yard with a depth of 22’-11”, and two (2) side yards with widths of 9’-11” and 3’-11”; and

¹ The applicant received an objection under Section 23-631 of the Zoning Resolution due to the penetration of the sky exposure plane by a front dormer. Over the course of hearings, the applicant revised the proposed building to comply with ZR § 23-631 and, thus, such waiver is no longer sought nor required.

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*² 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 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 this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge a detached one-family residence, as contemplated by ZR § 73-622; and

² Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

WHEREAS, the applicant proposes to enlarge the building by both vertically and horizontally extending the dwelling into the rear yard and southern side yard, resulting in a two- (2) story plus attic and cellar dwelling with 2,982 square feet of floor area (0.99 FAR), an open space ratio of 0.58 (1,744 square feet of open space), a front yard with a depth of 15'-1", a rear yard with a depth of 20 feet at the first story with an additional five (5) foot setback at the second story, and two (2) side yards with widths of 6'-1" and 3'-11"; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor to 1,245 square feet, the second floor to 1,027 square feet, and the attic to 710 square feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted, a minimum open space ratio of 1.5 is required, two (2) side yards each a minimum of five (5) feet in width and a minimum combined width of 13 feet and a rear yard with a minimum depth of 30 feet are required pursuant to ZR §§ 23-141, 23-461(a) and 23-47; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying northern side yard and rear yard, and the Board notes that, pursuant to a 1950 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same location and orientation as the site is occupied today and, thus, the non-complying northern side yard and rear yard predated the 1961 Zoning Resolution and are legal non-compliances; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 200 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 40 qualifying residences, 26 residences (65 percent) have an FAR of greater than 0.5, ranging from 0.52 to 1.49; and

WHEREAS, with regards to open space, the applicant demonstrated that, within the Study Area, 38 residences (95 percent) have an open space ratio less than 1.50, ranging from 1.39 to 0.49, and 6 residences (15 percent) have an open space ratio of 0.58 or less; and

WHEREAS, the applicant provided an analysis of rear yard conditions on the subject block, demonstrating that, of the 42 other single- or two- (2) family dwellings, 10 lots (24 percent) have rear yards with depths of less than 30 feet with rear yards ranging in depth from 22 feet to 28 feet, including the dwellings located immediately adjacent to the north of the subject site and the dwelling rear adjacent and to the southwest of the subject site, which have rear yard depths of 24 feet and 26 feet respectively; 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 Checklist No. 18-BSA-089K, dated January 30, 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 § 73-622.

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 the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, open space ratio side yards and rear yards, contrary to ZR §§ 23-141, 23-461(a) and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with

this application and marked Received “Received February 15, 2019”-Twenty-One (21) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.99 (2,982 square feet of floor area), a minimum open space ratio of 0.58 (1,744 square feet of open space), two (2) side yards with minimum widths of 6’-1” and 3’-11” at the northern side yard, and a rear yard with a minimum depth of 20 feet at the first floor and 25 feet above as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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. 2018-10-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 DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the special relief granted; and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

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

CERTIFICATION

***This copy of the Resolution
dated February 26, 2019
is hereby filed by
the Board of Standards and Appeals
dated March 25, 2019***

A handwritten signature in black ink, appearing to read 'Carlo Costanza', is written on a white rectangular piece of paper that is slightly tilted and placed over the printed name.

***Carlo Costanza
Executive Director***