



# ZRD1: Zoning Resolution Determination Form

Must be typewritten.

Use this form only to request Zoning Resolution determination (use CCD1 for all other requests)

### 1 Location Information Required for all requests on filed applications.

House No(s) \_\_\_\_\_ Street Name \_\_\_\_\_  
 Borough \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_ BIN# \_\_\_\_\_ CB No. \_\_\_\_\_

### 2 Applicant Information Required for all requests on filed applications.

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_  
 Business Name \_\_\_\_\_ Business Telephone \_\_\_\_\_  
 Business Address \_\_\_\_\_ Business Fax \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Mobile Telephone \_\_\_\_\_  
 E-Mail \_\_\_\_\_ License Number \_\_\_\_\_  
 License Type  P.E.  R.A. DOB PENS ID # (if available) \_\_\_\_\_

### 3 Attendee Information Required if different from Applicant in section 2 or no Applicant.

Relationship to the property:  Attorney (Predetermination Only)  Filing Representative (Class 2)  Other  
 Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_  
 Business Name \_\_\_\_\_ Business Telephone \_\_\_\_\_  
 Business Address \_\_\_\_\_ Business Fax \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Mobile Telephone \_\_\_\_\_  
 E-Mail \_\_\_\_\_ License/Registration # (if P.E./R.A./R.L.A./Attorney) \_\_\_\_\_

### 4 Nature of Request Required for all requests. Only one request may be submitted per form.

Determination request is for:  Determination  Predetermination  
 Determination request issued to:  Borough Commissioner's Office  Technical Affairs  
 Job associated with this request?  Yes (provide job # / doc # / obj # / examiner name below)  No  
 Job #: \_\_\_\_\_ Document #: 01 Objection #: \_\_\_\_\_ Examiner: ODDO  
 Has this request or a similar one been previously Denied?  Yes (attach all denied request form(s) and attachment(s))  No  
 Enter short description of Technical Topic (5 words or less): BUILDING LOCATED ON A SHALLOW LOT  
 Enter All Control #(s) for related CCD1/ZRD1 requests: \_\_\_\_\_

Zoning District(s): R3A TPPN, Memo: N/A  
 Zoning Overlay(s): N/A MDL: N/A  
 Special District(s): N/A BBs: N/A  
 ZR Section: 23-52 Code Section: \_\_\_\_\_ Rule #: N/A

Indicate all Buildings Department officials that you have previously reviewed this issue with (If any):  Borough Commissioner  Code & Zoning Specialist  General Counsel's Office  
 Deputy Borough Commissioner  Chief Plan Examiner  Other

<b>ADMINISTRATIVE USE ONLY</b>		<b>REVIEWED BY</b>	
Control #: <b>51604</b>		<b>Marshall A. Kaminer, PE</b>	
Appointment Scheduled With:		Executive Engineer Technical Affairs	
Comments:			
Review Team Members:		<b>M.Kaminer, S.Shaikh, T.Vultaggio, W.Lai, J.Kim</b>	
Reviewed By:		<b>DENIED</b>	Date _____

Control No.: **51064**  
 Date: **1/3/18**  
 Page: **1 of 12**

See comments on pages 4 through 5. <sup>2/16</sup>



5	<b>Description of Request</b> (additional space is available on page 3)
<p><b>Note: Buildings Department officials will only interpret or clarify the Zoning Resolution. Any request for variations of the Zoning Resolution must be filed with the Board of Standards and Appeals (BSA) or the Department of City Planning (DCP).</b></p>	

Please itemize all attachments, including plans/sketches, submitted with this form. (*attachment may not be larger than 11" x 17"*)  
 If request is based on a plan examiner objection, type in the applicable objection text exactly as it appears on the Objection sheet and include a copy of the Objection sheet in the submitted Pdf.

**RESPECTFULLY REQUEST DETERMINATION TO PLAN EXAMINER OBJECTION FOR SHALLOW ZONING LOTS.**

AN APPLICATION HAS BEEN FILED TO CONSTRUCT A TWO STORY HORIZONTAL ENLARGEMENT TO AN EXISTING TWO STORY ONE FAMILY RESIDENCE.

THIS IS A 12-10A ZONING LOT WHICH ENCOMPASSES TWO TAX LOTS. A PORTION OF THE ZONING LOT IS LESS THAN 70' DEEP AND IT IS MY INTERPRETATION THAT THIS PORTION OF THE ZONING LOT SHALL BE TREATED AS A SHALLOW LOT BASED ON ZR 23-52.

"Rear Yards (3/22/16) 23-52  
 Special Provisions for Shallow Interior Lots  
 R3 R4 R5

(a) In the districts indicated, if an interior lot:

- (1) 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
- (2) is less than 70 feet deep AT ANY POINT; the depth of a required rear yard for such interior lot may be reduced by one foot for each foot by which the maximum depth of such zoning lot is less than 70 feet. On any interior lot with a maximum depth of 50 feet or less, the minimum depth of a required rear yard shall be ten feet."

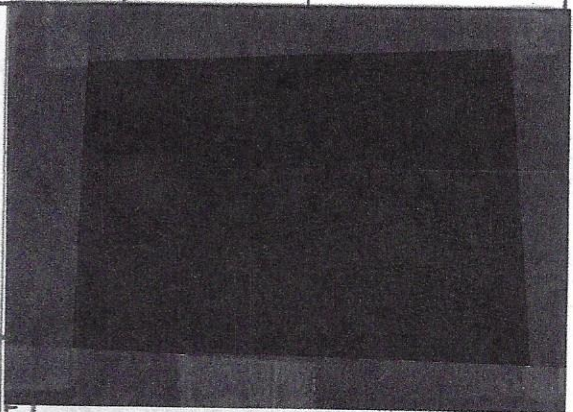
ZR 23-52 SPECIFICALLY STATES "AT ANY POINT" OF THE LOT THAT IS SHALLOW. NOWHERE IN THE ZONING RESOLUTION DOES IT STATE THAT THE ENTIRE ZONING LOT MUST BE LESS THAN 70.0'. THE USE AND INTENT OF THE WORDS "AT ANY POINT" IN MY OPINION, ARE VERY DELIBERATE AND ALLOWS REDUCTION IF ANY PORTION OF THE LOT IS LESS THAN 70.01

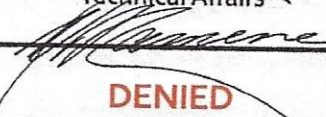
ADDITIONALLY THE LOCAL BOROUGH OFFICE REFERENCE IN THEIR DENIAL THAT ZR SECTION 23-52 STATES "WHEN THE MAXIMUM DEPTH OF THE LOT IS GREATER THAN 70' THE LOT SHALL BE TOO DEEP

*Note: Buildings Department Determination will be issued on the ZRD1 Response Form*

6	<b>Statements and Signature</b> Required for all requests (If Attorney, include "Esquire" or "Esq." in signature)
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I hereby state that all of the above information is correct and complete to the best of my knowledge. Falsification of any statement is a misdemeanor and is punishable by a fine or imprisonment, or both. It is unlawful to give to a City employee, or for a City employee to accept, any benefit, monetary or otherwise, either as a gratuity for properly performing the job or in exchange for special consideration. Violation is punishable by imprisonment or fine, or both.



ADMINISTRATIVE USE ONLY	REVIEWED BY <b>Marshall A. Kaminer, PE</b> Contract Executive Engineer Technical Affairs	
Reviewed By:	 <b>DENIED</b>	Date:

Control No.: **51064**  
 Date: **1/3/18**  
 Page: **2 of 12**

2/16  
**See comments on pages 4 through 5.**



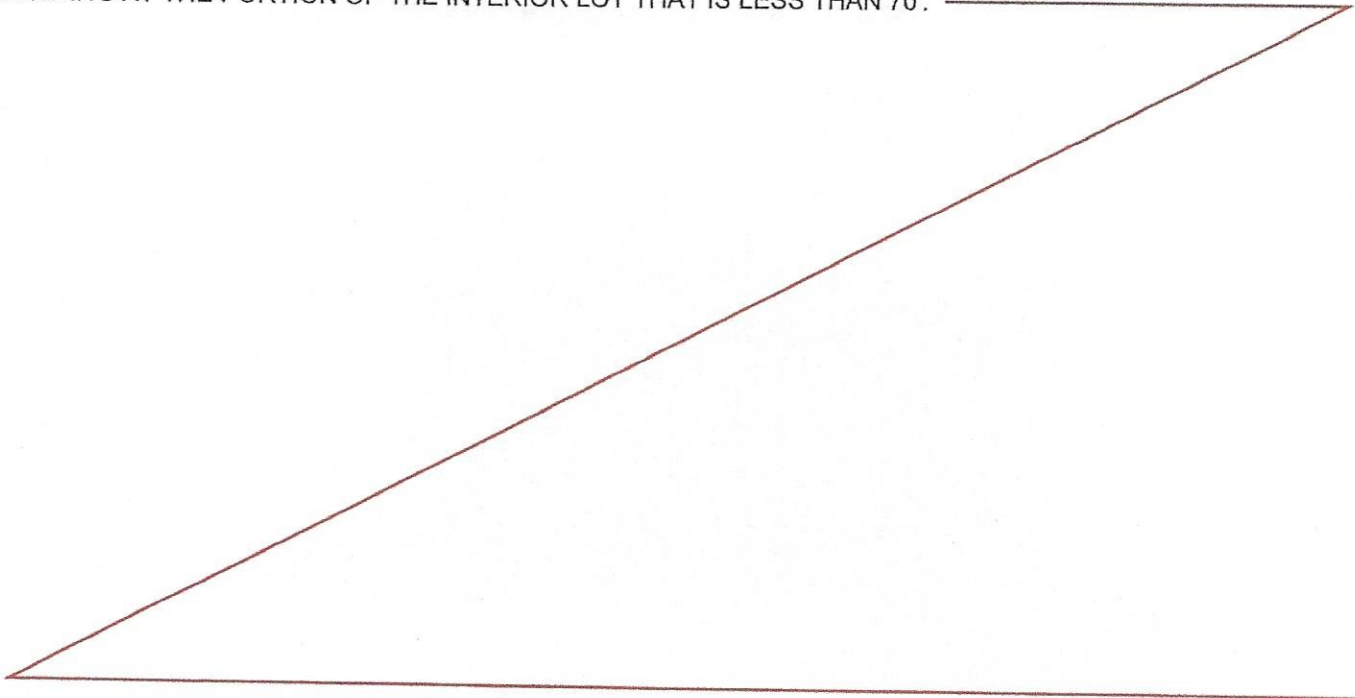
ZRD1

7 Description of Request (use this section if additional space is required for description)

TO GENERATE ANY DECREASE IN THE REQUIRED MINIMUM DEPTH OF THE REAR YARD, EVEN IF THE CRITERIA IN ZR23-52 (A) & (B) ARE MET. HOWEVER, THIS SECTION OF THE ZONING RESOLUTION DOES NOT INCLUDE THE FOREMENTIONED STATEMENT.

I HAVE ATTACHED A COPY OF ZR23-52 FOR YOUR REFERENCE.

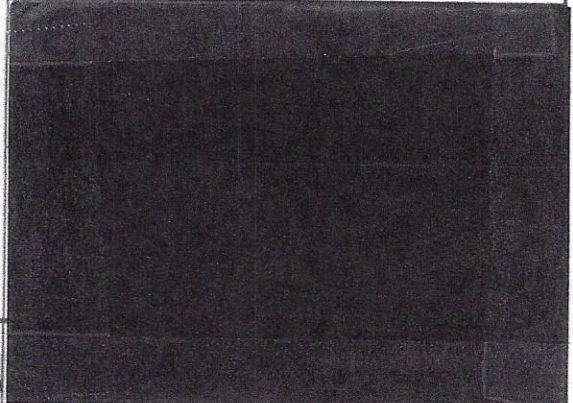
WE RESPECTFULLY REQUEST PERMISSION TO USE THIS SECTION TO REDUCE THE REAR YARD OF THE BUILDING AT THE PORTION OF THE INTERIOR LOT THAT IS LESS THAN 70'.



Note: Buildings Department Determination will be issued on the ZRD1 Response Form

8 Statements and Signature Required for all requests (If Attorney, include "Esquire" or "Esq" in signature)

I hereby state that all of the above information is correct and complete to the best of my knowledge. Falsification of any statement is a misdemeanor and is punishable by a fine or imprisonment, or both. It is unlawful to give to a City employee, or for a City employee to accept, any benefit, monetary or otherwise, either as a gratuity for properly performing the job or in exchange for special consideration. Violation is punishable by imprisonment or fine, or both.



REVIEWED BY  
Marshall A. Kaminer, P  
Executive Engineer  
Technical Affairs  
Control No.: 51064  
Date: 1/3/18  
Page: 3 of 12  
DENIED

ADMINISTRATIVE USE ONLY

Reviewed By:

Date

See comments on pages 4 through 5.



# ZRD1/CCD1 Response Form

**Location Information (To be completed by a Buildings Department official if applicable)**

House No(s) \_\_\_\_\_ Street Name \_\_\_\_\_  
 Borough \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_ BIN \_\_\_\_\_ Job No. \_\_\_\_\_

**DETERMINATION (To be completed by a Buildings Department official)**

Request has been:  Approved  Denied  Approved with conditions  
 Follow-up appointment required?  Yes  No

Primary Zoning Resolution or Code Section(s): ZR § 23-52

Other secondary Zoning Resolution or Code Section(s): ZR 12-10(a) definition of 'zoning lot'

Control Number: 51604

Comments:  
 The request to allow a rear yard reduction on the existing zoning lot, pursuant to ZR § 23-52(a) Special Provisions for Shallow Interior Lots, is hereby denied.

The subject premises is a two story, one family residence that is located on an existing zoning lot in an R3A zoning district. The applicant filed an Alteration Type 1 job no. \_\_\_\_\_ to horizontally enlarge the two story one family residence, attached by a party wall to an existing 2½ story one-family residence. The applicant's submitted drawings indicate that the existing zoning lot is comprised of tax lot #20 and tax lot #22. The applicant indicates that the tax lot #20 portion of this zoning lot is greater than 70 feet deep. The applicant further indicates that the tax lot #22 portion of this zoning lot is less than 70 feet deep and requests that this portion be treated as a "shallow lot" which permits a reduction in depth of the required rear yard pursuant to ZR § 23-52.

ZR § 23-52(a) Special Provisions for Shallow Interior Lots, states in relevant part,

- In [an R3A district], if an #interior lot#:
- (1) 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
  - (2) is less than 70 feet deep at any point;
- the depth of a required #rear yard# for such #interior lot# may be reduced by one foot for each foot by which the maximum depth of such #zoning lot# is less than 70 feet. On any #interior lot# with a maximum depth of 50 feet or less, the minimum depth of required #rear yard # shall be ten feet.

The applicant did not submit proof that the interior lot "was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of the application for a building permit." While the applicant states that such zoning lot is a ZR § 12-10(a) zoning lot, the applicant did not discuss when such lot was created. Since the applicant did not establish that the zoning lot was owned separately and individually from all other adjoining lots on 1961 and on the date of the job application, the depth of the required rear yard for such zoning lot may not be reduced.  
 continued on page 5.

Name of Authorized Reviewer (please print): Marshall A. Kaminer, P.E.  
 Title (please print): Chair, Code and Zoning Task Force  
 Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Issuers: write signature, date, and time on each page of the request forms; and attach this form.

**REVIEWED BY**  
**Marshall A. Kaminer, PE**  
 Executive Engineer  
 Technical Affairs

**Control No.: 51064**  
**Date: 1/3/18**  
**Page: 4 of 12**

Note: Determination will expire if construction document approval is not obtained within 12 months of issuance.

**See comments on pages 4 through 5**



# ZRD1/CCD1 Response Form

**Location Information (To be completed by a Buildings Department official if applicable)**

House No(s)	Street Name			
Borough	Block	Lot	BIN	Job No.

**DETERMINATION (To be completed by a Buildings Department official)**

Request has been:  Approved  Denied  Approved with conditions  
 Follow-up appointment required?  Yes  No

Primary Zoning Resolution or Code Section(s): ZR § 23-52

Other secondary Zoning Resolution or Code Section(s): ZR 12-10(a) definition of 'zoning lot'

Control Number: 51604

Comments:  
 continued from page 4.  
 Furthermore, although the applicant states that the tax lot #22 portion of this zoning lot is less than 70 feet deep pursuant to ZR § 23-52(a), the tax lot #20 portion of the zoning lot is greater than 70 feet deep. According to BSA Cal. No.47-12-A, the Board of Standards and Appeals held that a rear yard reduction may be permitted only when the maximum depth of the zoning lot is less than 70 feet at every point. Since the entire interior lot is not less than 70 feet deep, the depth of the required rear yard for such zoning lot may not be reduced.

Therefore, the rear yard reduction of ZR § 23-52(a) cannot be applied because the applicant did not demonstrate that the interior lot was owned separately and individually from all other adjoining tracts of land, on December 15, 1961," and entire interior lot is not less than 70 feet deep. .

Based on the above, the applicant's request is hereby denied.

Name of Authorized Reviewer (please print): Marshall A. Kaminer, P.E.  
 Title (please print): Chair, Code and Zoning Task Force  
 Authorized Signature: *[Signature]* Date: \_\_\_\_\_  
 Issuers: write signature, date, and time on each page of the request forms; and attach this form.

**REVIEWED BY**  
**Marshall A. Kaminer, PE**  
 Executive Engineer  
 Technical Affairs

**Control No.: 51064**  
**Date: 1/3/18**  
**Page: 5 of 12**

**Note: Determination will expire if construction document approval is not obtained within 12 months of issuance.**

**See comments on pages 4 through 5** 12/15



**UTILITY NOTE:**  
The Underground Utility Information Shown Herein Is One Of Several Possible Interpretations Of The Record Data As Provided By The Respective Utility Companies. The Engineer Does Not Assume Responsibility For The Actual Location, Size And Depth Of The Utilities Shown. The Engineer's Responsibility Is Limited To The Design And Construction Of Extension.

**CONTRACT:** 2016, MOORE SURVING, LLC  
ALL RIGHTS RESERVED

THIS IS A WARNING OF THE USER FOR ANY PERSON USING ANYTHING UNDER THE COVERAGE OF THIS SURVEY TO AVOID AN INJURY OR DEATH.  
IF ANY USER BEARS THE PROFESSIONAL SEAL OF THE LICENSED LAND SURVEYOR, THE USER SHALL AND THE RECORD, WHETHER BY PRINT OR BY ELECTRONIC MEANS, SHALL BE VALIDATED BY THE USER'S ATTENTION AND A SIGNATURE TO THE RECORD.

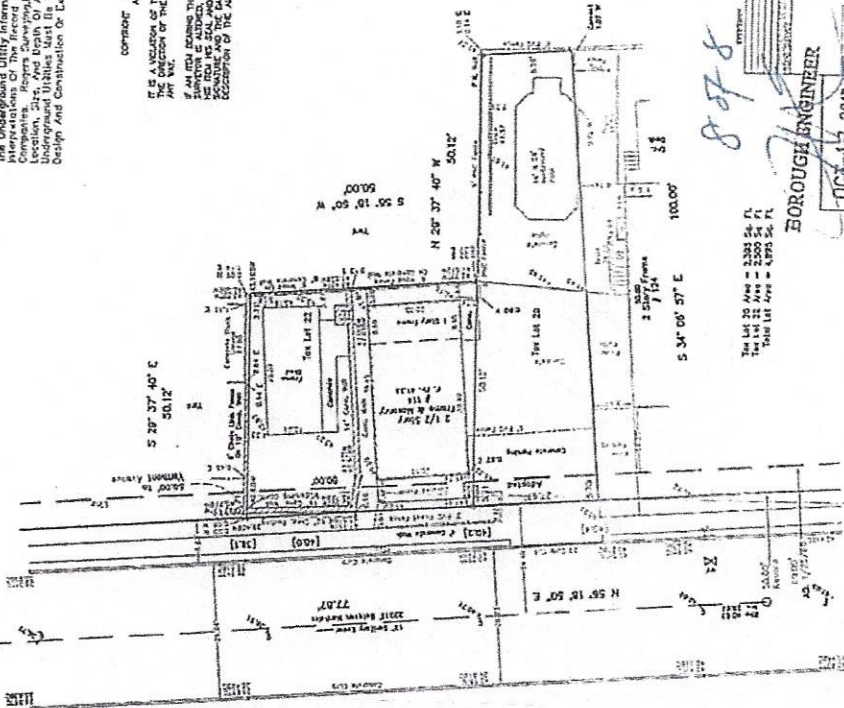
CERTIFIED ONLY TO:  
TRACY A. GONALETTA

N 55° 18' 50" E  
20.07' SURVEY  
20.07' TO THE TOP

NAVU 88

THIS IS A WARNING OF THE USER FOR ANY PERSON USING ANYTHING UNDER THE COVERAGE OF THIS SURVEY TO AVOID AN INJURY OR DEATH.

G-001.07



The Lot 22 Area = 2,203 Sq. Ft.  
The Lot 23 Area = 4,875 Sq. Ft.  
Total Lot Area = 7,078 Sq. Ft.

**BOROUGH ENGINEER**

10/15/2017

Drawn by	1/23/17
Checked by	1/23/17
Approved by	1/23/17
Scale	AS SHOWN
Sheet No.	4188
Total Sheets	51

THIS IS A WARNING OF THE USER FOR ANY PERSON USING ANYTHING UNDER THE COVERAGE OF THIS SURVEY TO AVOID AN INJURY OR DEATH.

**DATA NOTE:**  
COORDINATE AND ELEVATION DATA ARE REFERENCED TO THE BENCH MARK OF 2011 DATUM, AS ESTABLISHED BY THE U.S. COAST & GEODETIC SURVEY (NAD 83).  
ELEVATION DATA ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).

REVIEWED BY  
**Marshall A. Kamine PE**  
Executive Engineer  
Technical Affairs

*Marshall A. Kamine*

**DENIED**

Control No.: **51064**  
Date: **1/3/18**  
Page: **6 of 12**

See comments on pages 4 through 5.



47-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for FHR Development, LLC, owner.

SUBJECT – Application March 2, 2012 – Appeal to Department of Building’ determination that the proposed two-family building did not qualify for rear yard reduction pursuant §23-52. R3-1 zoning district.

PREMISES AFFECTED – 22 Lewiston Street, west side of Lewiston Street, 530.86’ north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

**APPEARANCES –**

For Applicant: Todd Dale.

**ACTION OF THE BOARD – Appeal Denied.**

**THE VOTE TO GRANT –**

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

**THE RESOLUTION –**

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated February 2, 2012 by the Staten Island Borough Commissioner of the Department of Buildings (“DOB”) (the “Final Determination”), with respect to DOB Application No. 520089056; and

WHEREAS, the Final Determination states, in pertinent part:

Proposed construction of two family residential building on zoning lot that is not less than 70 feet deep at all points, which is contrary to ZR 23-52; and

WHEREAS, a public hearing was held on this appeal on June 19, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 7, 2012, and then to decision on September 11, 2012; and

WHEREAS, the appeal is filed on behalf of the property owner who contends that DOB’s denial was erroneous (the “Appellant”); and

WHEREAS, DOB and Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the subject site consists of an irregularly-shaped lot with 114.15 feet of frontage on a mapped but unbuilt portion of Lewiston Street, a depth ranging from a minimum of 40.97 feet along the northern lot line to a maximum of 92.11 feet along the southern lot line, and a total lot area of 6,654 sq. ft.; and

WHEREAS, the Appellant states that the subject site was previously part of a larger tax lot (Lot 152), consisting of property which extended across Lewiston Street, a final mapped street; however, the Appellant represents that the subject site has always consisted of a single and separate zoning lot pursuant to ZR § 12-10 and

WHEREAS, as discussed further below, DOB claims that the Appellant has not established that the subject site constitutes a valid zoning lot that is owned separately and individually from all other tracts of land.

and

WHEREAS, the site is currently vacant and is located in an R3-1 zoning district within the Lower Density Growth Management Area (LDGMA); and

**PROCEDURAL HISTORY**

WHEREAS, the subject appeal concerns the proposal to construct a two-story two-family home with a floor area of 3,482.3 sq. ft. (0.52 FAR) on the site; and

WHEREAS, the applicant states that the proposed home complies with all requirements of the underlying R3-1 (LDGMA) zoning district; and

WHEREAS, however, the rear yard for the proposed home provides a rear yard with a depth of 10’-7” along the northerly building line and a depth of more than 30’-0” at the southerly building line (a rear yard with a minimum depth of 30’-0” is required), with the home angled parallel to the street line such that the depth of the rear yard increases proportionally to the increase in the depth of the subject lot from the northern lot line to the southern lot line; and

WHEREAS, on February 2, 2011, DOB issued the Final Determination, denying the Appellant’s application because the maximum depth of the subject site was not less than 70 feet at all points, and therefore was not entitled to a reduction in the depth of the rear yard under ZR § 23-52; and

WHEREAS, the Appellant asserts that the Final Determination is contrary to the plain language of ZR § 23-52, which permits a reduction in the required rear yard depth for lots which are “less than 70 feet deep at any point,” and therefore allows for the reduction of the rear yard depth for portions of the subject lot, which has a depth ranging from 40.97 feet to 92.11 feet; and

WHEREAS, accordingly, the question on appeal is limited to the determination of whether ZR § 23-52 provides a rear yard reduction for all lots that are “less than 70 feet deep at any point” or only when “the maximum depth of such zoning lot is less than 70 feet”; and

**PROVISIONS OF THE ZONING RESOLUTION**

WHEREAS, the ZR provision the Appellant and DOB cite reads, in pertinent part:

ZR § 23-52 (Special Provisions for Shallow Interior Lots)

R3 R4 R5 R6 R7 R8 R9 R10

In the districts indicated, if an #interior lot#:

(a) 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

(b) is less than 70 feet deep at any point; the depth of a required #rear yard# for such #interior lot# may be reduced by one foot for each foot by which the maximum depth of

REVIEWED BY  
**Marshall A. Kaminer, PE**  
 Executive Engineer  
 Technical Affairs

*[Signature]*

**DENIED**

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**See comments on pages 4 through 5.**



47-12-A

such #zoning lot# is less than 70 feet. On any #interior lot# with a maximum depth of 50 feet or less, the minimum depth of a required #rear yard# shall be ten feet.

\* \* \*

ZR § 33-27 (Special Provisions for Shallow Interior Lots)

C1 C2 C3 C4 C5 C6 C7 C8

In all districts, as indicated, if an #interior lot# consists entirely of a tract of land:

(a) which 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

(b) which is less than 70 feet deep;

the depth of a required #rear yard# for such #interior lot# may be reduced by one foot for each two feet by which the maximum depth of such #interior lot# is less than 70 feet. No #rear yard# is required on any #interior lot# with a maximum depth of 50 feet.

\* \* \*

ZR § 62-332 (Rear Yards and Waterfront Yards)

(a)...For such shallow portions of lots, the minimum depth may be reduced by one foot for each foot that the lot dimension measured from such edge is less than 70 or 80 feet, as applicable...; and

DISCUSSION

**A. The Appellant's Interpretation**

WHEREAS, the Appellant asserts that the language of ZR § 23-52 is clear and unambiguous and that, accordingly, it must be construed "so as to give effect to the plain meaning of the words used" (Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98 106-107 (1997); citing Patrolmen's Benevolent Assn. v. City of New York, 41 N.Y.2d 205, 208 (1976) [citations omitted]; and

WHEREAS, specifically, the Appellant argues that the Final Determination is contrary to the plain meaning of ZR § 23-52, which provides for applicability of the provision in the event that the lot "is 70 feet deep *at any point*" [emphasis added]; and

WHEREAS, the Appellant argues that there is no legal or rational basis for DOB to expand the clear language of ZR § 23-52; and

WHEREAS, the Appellant contends that the words "at any point" in ZR § 23-52(b) are unambiguous and should take precedence over potentially conflicting subsequent provisions of the text; and

WHEREAS, specifically, the Appellant argues that the words "at any point" in ZR § 23-52(b) should be given more weight than the potentially conflicting language in ZR § 23-52 permitting a reduction in the depth of the rear yard "by one foot for each foot by which the maximum depth of such #zoning lot# is less than 70 feet" [emphasis

added] because the words "at any point" appear first in the text and are therefore predominant; and

WHEREAS, the Appellant also contends that DOB's reliance on the phrase "by which the maximum depth of such zoning lot is less than 70 feet" as proof that the intent of the statute is erroneous, and argues that DOB's interpretation appears to create a conflict with the inclusion and plain meaning of the word "any" in the statute; and

WHEREAS, specifically, the Appellant states that, rather than applying an interpretation that is consistent with use of the word "any," DOB's interpretation would make ZR § 23-52(b) a totally superfluous appendage to the statute; and

WHEREAS, the Appellant argues that a more cogent interpretation of the text results from reviewing the "maximum depth" clause more carefully, and looks to the ZR § 12-10 definition of "Lot Depth" ("the mean horizontal distance between the #front lot line# and #rear lot line# of a #zoning lot#...") for guidance; and

WHEREAS, the Appellant contends that DOB's interpretation ignores the clear discrepancy between measuring a "mean" distance (a single number, based on an average of the lot depth), versus the language in ZR § 23-52, which is intended to apply to shallow lots that may be irregularly shaped but which are less than 70 feet deep "at any point" (regardless of the mean measurement); and

WHEREAS, the Appellant further contends that a reasonable reading of ZR § 23-52 provides for a reduction of one foot for each foot by which the maximum depth of such zoning lot is less than 70 feet (as applied only to those portions of the lot that are a maximum of 70 feet in depth), and that the use of the words "maximum depth" in the provision is merely intended to refer to the maximum depth (a fixed point as opposed to a mean) up to which a property owner is entitled to a reduction in the rear yard; and

WHEREAS, the Appellant argues that by measuring each point, as opposed to the usual "mean" measurement, ZR § 23-52 provides for a rear yard reduction of one foot for portions of a lot that are 69 feet deep, a reduction of two feet for portions that are 68 feet deep, a reduction of three feet for portions that are 67 feet deep, etc.; and

WHEREAS, the Appellant states that this formula would apply down to a depth of 50 feet, at which point a maximum reduction of 20 feet would be permitted (to a rear yard with a minimum depth of ten feet), and that portions of the lot that are greater than 70 feet in depth would not be entitled to a reduction in the required rear yard; and

WHEREAS, the Appellant represents that the proposed interpretation does not require that the word "any" be omitted from consideration, and furthermore accounts for irregularly shaped lots by not providing a benefit to lots that are less than 70 feet deep in only a

REVIEWED BY  
 Marshall A. Kammer, PE  
 Executive Engineer  
 Technical Affairs

*[Signature]*

**DENIED**

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 Date: **1/3/18**  
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**See comments on pages 4 through 5.**



47-12-A

small area, while also not penalizing lots that are primarily less than 70 feet deep but may have a section that is more than 70 feet in depth; and

WHEREAS, the Appellant also argues that the legislative intent supports its interpretation of the text, and submitted three iterations of the ZR § 23-52 language: (1) the text of the section from Zoning New York City, the 1958 proposal for the update of the Zoning Resolution prepared by Voorhees Walker Smith & Smith (the "1958 Voorhees Proposal"); (2) the original text of the section from the December 15, 1961 Zoning Resolution (the "1961 Text"); and (3) the February 20, 1964 resolution by the Board of Estimate amending ZR § 23-52 (the "1964 Amendment"); and

WHEREAS, the Appellant notes that the 1958 Voorhees Proposal did not include the words "at any point" in subsection (b) of the proposed text, and contends that the fact that the text was changed from the 1958 Voorhees Proposal to include the words "at any point" in subsection (b) of the 1961 Text demonstrates a clear intent to have the section apply to zoning lots with varied depths, and to allow the section to apply to zoning lots that might exceed a depth of 70 feet at certain points; and

WHEREAS, the Appellant further contends that the inclusion of the word "any" in the 1961 Text was not an arbitrary inclusion, and by any reasonable interpretation the addition of this word must be considered an effort to expand the application of the provision; and

WHEREAS, the Appellant argues that the 1964 Amendment further evidences the intent to expand the application of ZR § 23-52 because it allows the provision to apply within R3, R4, and R5 zoning districts where it previously only applied in R6 through R10 zoning districts, and the legislature's expansion of the application of the provision to lower density residential neighborhoods reflects that the history of amendments to ZR § 23-52 is one of expansion, not limitation, and the presence of potentially contradictory words within ZR § 23-52 should be viewed in the context of the history of expansion of this provision; and

WHEREAS, the Appellant also points to ZR §§ 33-27 and 62-332(a) as further evidence of the intended meaning of ZR § 23-52, specifically with regards to the inclusion of the words "at any point" in ZR § 23-52(b); and

WHEREAS, the Appellant notes that ZR § 33-27, which is the commercial/community facility equivalent to ZR § 23-52, parallels the language of ZR § 23-52, however ZR § 33-27(b) does not include the language "at any point;" and

WHEREAS, the Appellant argues that the purposeful inclusion of "at any point" in ZR § 23-52 clearly and unambiguously calls for application of a different standard than ZR § 33-27, and contends that the relevant language of ZR § 23-52 should be read as follows: "the depth of a required rear yard for such interior lot may be reduced by one foot for each foot by which the

maximum depth of such portion of the zoning lot is less than 70 feet" [language added]; and

WHEREAS, the Appellant asserts that such an interpretation provides for relief where a residential lot is unreasonably shallow, but avoids granting relief for portions of a lot where it is possible to provide a required rear yard; and

WHEREAS, the Appellant represents that in similar sections of the Zoning Resolution enacted on later dates, the Zoning Resolution includes language designed to indicate the application of provisions that apply to portions of lots; and

WHEREAS, specifically, the Appellant argues that ZR § 62-332(a), which concerns the required depth of waterfront yards (and provides relief for shallow lots) is an example of a section of the Zoning Resolution which addresses this issue, by noting that: "[f]or such shallow portions of lots, the minimum depth may be reduced by one foot for each foot that the lot dimension measured from such edge is less than 70 or 80 feet, as applicable" [emphasis added]; and

WHEREAS, the Appellant notes that the reference to shallow portions of lots is similarly repeated in ZR §§ 62-332(b) and 62-53(a)(3)(i); and

WHEREAS, the Appellant asserts that, rather than ignore the intentional inclusion of the "at any point" language in ZR § 23-52, it is more reasonable to assume that the drafters merely neglected to modify the second part of the provision to refer to the affected "portions" of the lot; and

### B. The Department of Buildings Interpretation

WHEREAS, DOB argues that the Appellant's interpretation disregards the plain meaning of the text because ZR § 23-52 specifies that a reduction is allowed only where the maximum depth of the lot is greater than 70 feet, regardless of any point that may be shallower than 70 feet; and

WHEREAS, DOB asserts that, although a lot may meet the criteria set forth in subparagraphs (a) and (b), the operative language of ZR § 23-52 is contained in the last paragraph, which reflects that the maximum depth of the lot is the critical dimension for the purpose of calculating the amount of the rear yard deduction; and

WHEREAS, DOB further asserts that the purpose of the phrase under ZR § 23-52(b) describing a lot "which is less than 70 feet deep at any point" is to identify the category of interior lots for which a reduction may be available, and pursuant to the last paragraph of the text, for lots that meet the prerequisites of subsections (a) and (b), a lot having a maximum depth of less than 70 feet may apply one formula to reduce the rear yard depth, and a lot having a maximum depth of less than 50 feet may apply another formula;

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 Executive Engineer  
 Technical Affairs

*[Signature]*

**DENIED**

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and

WHEREAS, DOB contends that subsections (a) and (b) describe a threshold that must be met prior to the application of the reduction formula, but satisfaction of subsections (a) and (b) do not guarantee a rear yard reduction, nor do they establish how much of a reduction is available; and

WHEREAS, by letter dated July 13, 2012, the Department of City Planning ("DCP") states that it agrees with DOB's interpretation of ZR § 23-52, noting that "[s]ince the maximum depth of the zoning lot, as stated by the applicant, is more than 70 feet deep, no reduction is possible;" and

WHEREAS, DOB argues that, contrary to the Appellant's claim that the phrase "any point" was intentionally added to the 1961 Text because it intended to change the 1958 Voorhees Proposal which did not include such language, the addition or omission of the words "any point" does not change the fact that the rear yard depth reduction allowed by ZR § 23-52 is calculated only according to a lot's maximum depth; and

WHEREAS, DOB asserts that both the 1958 Voorhees Proposal and the adopted text of ZR § 23-52 allow a rear yard to be reduced by one foot for each foot by which the maximum depth of the zoning lot is less than 70 feet, and that even though the words "at any point" were added in the adopted 1961 Text, the last paragraph of the section dictates that the reduction is calculated based on the amount by which the maximum lot depth is less than 70 feet, and there is no rational application of this formula that allows a rear yard depth reduction if the zoning lot's maximum depth is 70 feet or more; and

WHEREAS, as to the Appellant's contention that the 1964 Amendment's addition of R3 through R5 zoning districts to the list of districts in which the rear yard reduction may be taken demonstrates an intent to expand the application of ZR § 23-52 to permit a reduction in rear yard depth for lots having varying depths which fall short of 70 feet at certain points and exceed 70 feet at certain points, DOB asserts that the addition of applicable zoning districts has no bearing on the circumstances under which the statute allows a rear yard depth reduction; and

WHEREAS, DOB further argues that the minor differences in the versions of the 1958 Voorhees Proposal, the 1961 Text, the 1964 Amendment, as well as the February 2, 2011 amended text which removed the phrase "consists of a tract of land" from ZR § 23-52, do not affect the critical part of the text that sets forth the rear yard depth reduction calculation, and the meaning of the section did not change as a result of any of these minor amendments; and

WHEREAS, as to the Appellant's claim that the fact that ZR § 33-27 does not include the phrase "any point" and is purposefully dissimilar to the language of

ZR § 23-52, DOB asserts that there is no basis to conclude that the words "at any point" in ZR § 23-52 allow a rear yard reduction along shallow portions of a lot in the residential district, and the absence of such words in ZR § 33-27 allow a rear yard reduction only where every point on the lot is less than 70 feet deep, since both sections only permit a deduction that corresponds to the amount by which the maximum lot depth is less than 70 feet; and

WHEREAS, as to the Appellant's claim that the language of ZR § 62-332(a), which allows a reduction in minimum depth of a rear yard along portions of waterfront zoning lots, should be used as guidance in interpreting ZR § 23-52, DOB argues that the two provisions are not comparable; and

WHEREAS, specifically, DOB asserts that ZR § 62-332(a) is unlike ZR § 23-52 (and ZR § 33-27) in that it allows a rear yard reduction along shallow portions of the waterfront zoning lot rather than a reduction of the minimum required rear yard for the entire lot; and

WHEREAS, DOB argues that the difference in the language of ZR § 62-332(a) actually shows that there is a significant difference between the calculation of a rear yard reduction on a shallow interior lot and on a waterfront lot, as there is no indication that a reduction is allowed along the shallow portions of interior lots, and contrary to the Appellant's claim, the meaningful difference in language between these sections makes clear that the rear yard reduction of ZR § 23-52 is only available for the entire lot if the maximum depth of the lot is less than 70 feet; and

CONCLUSION

WHEREAS, the Board agrees with DOB and DCP's interpretation of ZR § 23-52 as allowing for a reduction of the depth of the rear yard only if the zoning lot is less than 70 feet deep at every point; and

WHEREAS, specifically, the Board agrees with DOB that the operative language of ZR § 23-52 is found in the last paragraph, which states that "the depth of a required rear yard for such interior lot may be reduced by one foot for each foot by which the maximum depth of such zoning lot is less than 70 feet..." and that satisfaction of subsections (a) and (b) of ZR § 23-52 does not guarantee a rear yard reduction; and

WHEREAS, the Board disagrees with the Appellant's claim that the language "less than 70 feet deep at any point" is clear and unambiguous, given that when the statute is read in its entirety, the language relied upon by the Appellant is clearly at odds with the last paragraph of the statute ("by which the maximum depth of such zoning lot is less than 70 feet"); and

WHEREAS, the Board acknowledges that there is a contradiction between the words "at any point" in ZR § 23-52(b) and "maximum depth" in the last paragraph of the statute; however, the Board finds that when the

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 Technical Affairs

*[Signature]*

**DENIED**

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statute is read in its entirety the only rational way to interpret the text is to allow for a rear yard reduction only if the zoning lot is less than 70 feet deep at every point; and

WHEREAS, the Board disagrees with the Appellant's argument that the language "at any point" is predominant in the text and should be given more weight than the words "maximum depth" merely because the phrase "at any point" is found earlier in the text of ZR § 23-52; and

WHEREAS, the Board notes that the text of ZR § 23-52 is formatted in such a way that ZR §§ 23-52(a) and (b) are subsections of the main body of the text which begins "[i]n the districts indicated, if an #interior lot#, " and which resumes in the last paragraph which provides the reduction formula that serves as the operative language of the section and includes the phrase "the maximum depth of such #zoning lot#"; therefore, the Board finds no support for the Appellant's claim that the phrase "at any point" should be given more weight in interpreting the statute; and

WHEREAS, the Board finds that the formula advocated by the Appellant for applying the rear yard reduction of ZR § 23-52, which relies in part on the ZR § 12-10 definition of "lot depth" to interpret the text and would create a "sliding scale" whereby the depth of a rear yard would vary in accordance with the portions of the lot that are less than 70 feet, is not supported by the text; and

WHEREAS, the Board notes that ZR § 23-52 refers only to "the maximum depth" of a zoning lot and at no point uses the term "lot depth"; as such the Board does not find it appropriate to invoke the definition of "Lot Depth" in ZR § 12-10 in order to give meaning to the phrase "maximum depth"; and

WHEREAS, the Board further rejects the Appellant's suggestion that the Board should alter the relevant language of ZR § 23-52 to read: "the depth of a required rear yard for such interior lot may be reduced by one foot for each foot by which the maximum depth of such portion of the zoning lot is less than 70 feet" [language added]; and

WHEREAS, the Board finds that while the text of ZR § 23-52 may be imperfect, there is no rational basis for the Board to add language to a section of the Zoning Resolution that was not included by the drafters of the text, and if the Appellant seeks to have the text of the Zoning Resolution amended it can pursue such an amendment at the City Planning Commission; and

WHEREAS, the Board disagrees with the Appellant's assertion that the legislative history of ZR § 23-52 supports its interpretation of the text; and

WHEREAS, the Board agrees with DOB that the 1964 Amendment's addition of R3 through R5 zoning districts to the list of districts in which the rear yard reduction may be taken has no bearing on the circumstances under which the statute allows a rear

yard depth reduction, and contrary to the Appellant's claim, does not demonstrate an intent to expand the application of ZR § 23-52; and

WHEREAS, the Board finds that none of the amendments to the text of ZR § 23-52 demonstrate an intent that the section be applied to allow a reduction in the depth of the rear yard for lots that have a maximum depth of 70 feet or more; and

WHEREAS, to the contrary, the Board notes that the commentary that accompanies the 1964 Amendment states that:

Sections 23-52 and 24-37 of the Zoning Resolution provide for a reduction in the depth of required rear yards in R6, R7, R8, R9 and R10 Districts, *if the affected lots are less than 70 feet in maximum depth.* This amendment will permit the same reduction of the depth of rear yard in R3, R4 and R5 Districts [emphasis added]; and

WHEREAS, accordingly, the Board finds that the commentary to the 1964 Amendment, which is the only portion of the legislative history materials provided by the Appellant which addresses the language at issue in the subject appeal, actually supports DOB and DCP's interpretation of the text in that it indicates that the intent of the text is for rear yard reductions to be permitted only for lots that "are less than 70 feet in maximum depth"; the commentary to the 1964 Amendment does not mention the language "at any point"; and

WHEREAS, the Board agrees with DOB that the fact that phrase "at any point" is absent from the text of ZR § 33-27 (the commercial/community facility equivalent to ZR § 23-52) does not provide a basis to conclude that in residential districts ZR § 23-52 allows a rear yard reduction along shallow portions of a lot, while in commercial districts ZR § 33-27 only allows a rear yard reduction where every point on the lot is less than 70 feet deep, since both sections only permit a deduction that corresponds to the amount by which the maximum lot depth is less than 70 feet; and

WHEREAS, the Board notes that the Appellant has not provided any rationale as to why a more liberal formula for providing a rear yard reduction should apply to residential districts as opposed to commercial districts, and the Board is not convinced that the mere inclusion of the words "at any point" in ZR § 23-52 was intended to evoke a significantly different formula for calculating a rear yard reduction where the text of ZR §§ 23-52 and 33-27 are otherwise substantially identical; and

WHEREAS, as to the Appellant's comparison of the language of ZR § 23-52 and 62-332(a), the Board agrees with DOB that the difference in the language of ZR § 62-332(a) actually shows that there is a significant difference between the calculation of a rear yard

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*[Signature]*

**DENIED**

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reduction on a shallow interior lot and on a waterfront lot, and the meaningful difference in language between these sections makes clear that the rear yard reduction of ZR § 23-52 is only available for the entire lot if the maximum depth of the lot is less than 70 feet; and

WHEREAS, the Board notes that during the course of the hearing process DOB raised an additional concern that the subject site also did not satisfy the threshold requirement under ZR § 23-52(a) because the Appellant did not demonstrate that the site was a zoning lot owned separately and individually from all other tracts of land on December 15, 1961 and on the date of the application for a building permit; and

WHEREAS, however, because DOB's objection related to ZR § 23-52(a) was not part of the Final Determination which serves as the basis of this appeal, and because the Board deems it unnecessary to make a determination on the ZR § 23-52(a) issue in order to reach a decision on the merits of the subject appeal, the Board therefore finds it appropriate to limit the scope of its determination accordingly; and

WHEREAS, the Board concludes that, based upon the above, ZR § 23-52 allows a reduction in the depth of the required rear yard only when the maximum depth of the zoning lot is less than 70 feet at every point; and

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Staten Island Borough Commissioner, dated February 2, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, September 11, 2012.

A true copy of resolution adopted by the Board of Standards and Appeals, September 11, 2012.

Printed in Bulletin Nos. 36-38, 37

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

REMOVED BY  
 Marshall A. Kaminer, PE  
 Executive Engineer  
 Technical Affairs

**CERTIFIED RESOLUTION**

*[Signature]*  
**DENIED**  
*[Signature]*  
 Chair/Commissioner of the Board

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