

130-06-BZ

APPLICANT – Anderson Kill & Olick, P.C., for Amsterdam Nursing Home Corp., owner.

SUBJECT – Application June 22, 2006 – Variance pursuant to Z.R. §72-21 to permit a one-story addition in the rear yard of an existing nursing home. The Premise is located in R8 and R8/C1-4 zoning districts. The proposal is contrary to Z.R. §24-33(b)(3). The rear yard proposed for the addition is currently vacant.

PREMISES AFFECTED – 1060 Amsterdam Avenue, West side of Amsterdam Avenue between 112th and 113th Streets, Block 1884, Lots 29, 36, Borough of Manhattan.

COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Robert Cook.

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

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 23, 2006, acting on Department of Buildings Application No. 104067670, reads, in pertinent part:

“The proposed nursing home use (on first floor) in a R8 zoning district located more than 100 feet beyond corner of the street is not a permitted obstruction and is contrary to ZR 24-33 b (2) and (3)”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R8 zoning district and partially within a C1-4(R8) zoning district, a one-story enlargement in the rear yard of an existing nursing home, which is contrary to ZR § 24-33; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, and then to decision on December 5, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 9, Manhattan, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Amsterdam Nursing Home (the “Home”), a nonprofit institution; and

WHEREAS, the site is L-shaped and comprises two tax lots, located on the west side of Amsterdam Avenue, between West 112th Street and West 113th Street, with frontage on all three streets; and

WHEREAS, the subject site is within an R8 zoning district for the westernmost 100 feet along West 112th Street; the remainder of the site is within an R8 zoning

district with a C1-4 overlay; and

WHEREAS, the subject site has a lot area of 26,238.75 sq. ft. and is improved upon with a 13-story and one-story 168,086 sq. ft. nursing home building, which accommodates 409 residents, and an adult day care center; and

WHEREAS, in 1992, the Home was granted permission to build an addition to the existing facility on the newly-acquired adjacent site on the southwest corner of Amsterdam Avenue and West 113th Street (tax lot 36); and

WHEREAS, the applicant represents that the proposed enlargement was designed to achieve efficient floor plates and to modernize the Home’s facilities; and

WHEREAS, the Home also renovated an existing building on the newly-acquired lot and created the day care center; and

WHEREAS, the approvals necessary to construct the 1992 enlargement included: (1) a City Planning Commission special permit to permit the community facility floor area (6.5 FAR) to apply to the enlargement; (2) a disposition of city-owned property to the nursing home; (3) an amendment to the Cathedral Parkway Urban Renewal Plan to permit a nursing home on the acquired property; and (4) a City Planning Commission certification regarding community facility development within the subject Community District; and

WHEREAS, the applicant states that when the enlargement of the Home was built, a portion of the rear yard at the western end of the building was filled in with a 14-foot high structure, leaving an approximately 69-foot wide open area between that structure and the new wing fronting on Amsterdam Avenue; and

WHEREAS, the applicant represents that as part of the enlargement and renovation plan to be carried out pursuant to the 1992 proposal, the Home had planned to fill in the remainder of the rear yard with a one-story, 14-foot high addition; and

WHEREAS, this portion of the enlargement would have been as-of-right under then existing zoning as a permitted obstruction of one story and less than 23 feet in height in the rear yard of a community facility building; and

WHEREAS, the applicant represents that due to budgetary constraints, this part of the planned enlargement was never built; and

WHEREAS, the applicant notes that in 2004 there was a text amendment to ZR § 24-33 related to community facility use, which now permits limited rear yard encroachments only if located within 100 feet of the intersection of a wide street; exceptions include schools, hospitals, and houses of worship are except, but not nursing homes; and

WHEREAS, therefore, the westernmost portion (28 feet) of the proposed rear yard addition is not permitted as it is more than 100 feet from Amsterdam Avenue; and

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WHEREAS, the applicant now proposes to build the one-story addition into the 32 ft. deep open space in the rear yard; and

WHEREAS, the applicant only requires a waiver for the 28 ft. by 32 ft. (896 sq. ft.) portion of the enlargement that will be located within the R8 portion of the site; the remainder of the enlargement is within 100 feet of the intersection where the community facility use is a permitted obstruction; and

WHEREAS, the enlargement complies with all the approvals of the 1992 proposal, and the enlarged building would still be within the previously-approved 6.5 FAR; and

WHEREAS, the applicant represents that an approval from the City Planning Commission is being sought for the modification of the previously-approved site plan to permit the rear yard obstruction; and

WHEREAS, the applicant proposes to build the one-story 2,462 sq. ft. enlargement and to move mechanical equipment now located on the roof of the existing portion of the building in the rear yard to the roof of the 13-story portion of the building; and

WHEREAS, the proposed enlargement will contain new facilities for residents' activities and allow for a reorganization of the Home's first floor services, which will permit the admissions office in the cellar to be relocated to the first floor; and

WHEREAS, the applicant states that the following are the programmatic space needs of the Home, which have led to the proposal to construct the one story addition: (1) a need to provide a common space for residents to interact with others and attend instructional programs; (2) a need to provide a more accessible admissions office; and (3) a need to enlarge the adult day care program, which operates at full capacity; and

WHEREAS, in order to meet these needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the rear yard waiver is necessary to complete the proposed plans and to create efficient use of the first floor for common space, the day care program, and to allow for the relocation of the admissions office; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the enlargement and redesign of the first floor is necessary to address the Home's needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site, when considered in conjunction with the programmatic needs of the Home, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Home is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance

requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant states that the enlargement will be located in the rear yard where it is not visible from the street; and

WHEREAS, further, the applicant states that the enlargement will be surrounded by the Home's existing building on three sides and occupies space that would otherwise be separated by adjacent neighbors' yards by a fence and wall of at least 12 feet in height; and

WHEREAS, accordingly, the Board finds that this action will not 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 applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Home could occur on the existing lot given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested rear yard waiver is the minimum waiver necessary to accommodate the Home's current and projected programmatic needs; and

WHEREAS, the Board notes that the applicant will limit the enlargement to one-story and 14 ft. in height so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Home to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type II action pursuant to Sections 617.13 of 6NYCRR; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R8 zoning district and partially within a C1-4(R8) zoning district, a one-story enlargement in the rear yard of an existing nursing home which is contrary to ZR § 24-33, *on condition* that any and all work shall substantially conform to drawings as they apply to the

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objections above noted, filed with this application marked "Received October 27, 2006"--(3) sheets; and *on further condition*:

THAT the total building floor area of the post-enlargement building shall not exceed 170,549 sq. ft. (6.5 FAR), as illustrated on the BSA-approved plans;

THAT the proposed enlargement shall be one story and 14 ft. in height;

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, December 5, 2006.

**A true copy of resolution adopted by the Board of Standards and Appeals, December 5, 2006.
Printed in Bulletin Nos. 46-48, Vol. 91.**

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