

134-03-A

APPLICANT - James Periconi, Esq., for Olive Freud.
OWNER OF RECORD - Hudson Waterfront Associate.
SUBJECT - Application April 21, 2003 - An appeal challenging the Department of Buildings' March 20, 2003 denial of applicant's request to revoke the permit for construction at said premises, enforce the conditions of the Special Permit and Restrictive Declaration, Art. II, §2.01(d), dated December 17, 1992, and to enforce the conditions of the Mapping Agreement, dated May 27, 1998.

PREMISES AFFECTED - 240 Riverside Boulevard, a/k/a "Building A", between West 72nd Street and Riverside Boulevard, Block 1171, Lot 105, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES -

For Applicant: James Periconi.

For Opposition: Steven Russo.

For Administration: Lisa M. Orrantia, Department of Buildings.

ACTION OF THE BOARD - Appeal denied.

THE VOTE TO GRANT -

Affirmative:.....0

Negative: Chairman Chin, Vice-Chair Babbar, Commissioner Caliendo and Commissioner Miele.....4

THE RESOLUTION -

WHEREAS, the instant appeal comes before the Board in response to a determination issued March 20, 2003, by respondent New York City Department of Buildings ("DOB"), to a representative of the appellant, who had requested revocation of a DOB permit allowing construction of a residential building ("Building A") at the subject premises; and

WHEREAS, said DOB determination states, in part, "[T]he Department properly issued its approval and permit ... for the referenced application and ... denies your revocation request" and "[B]ased upon our review, nothing in the CPC approvals conditioned the issuance of the Department's approval and permit ... on the closure of the 72nd Street off ramp. Because the building plans filed conform to building plans approved by the CPC, the Department has no basis to refuse to issue or to revoke the permit"; and

WHEREAS, Building A is located within a planned general large-scale development of residential and commercial uses, comprised of 15 development parcels, facing Riverside Drive South (the "development"); and

WHEREAS, on October 26, 1992, the City Planning Commission ("CPC") approved certain special permits related to the development (the "special permits"); and

WHEREAS, the CPC resolution approving the special permits states that the development must be constructed in accordance with plans set forth in the CPC resolution; that the development must include mitigation measures as set forth in the Final Environmental Impact Statement prepared for the

development (the "FEIS"); and that the development would be allowed only after a restrictive declaration is recorded and filed; and

WHEREAS, CPC approved changes to the City Map in order to extend the existing street system into the development site, and to eliminate several streets in order to consolidate the development parcels, and also amended ZR Zoning Map 8c to allow for higher density at the development; and

WHEREAS, on December 17, 1992, the owner of the premises, as required by the special permits, entered into a restrictive declaration concerning the development, restricting its construction in a manner consistent with the special permits, the City Map change, and the rezoning; and

WHEREAS, on May 27, 1998, the City and the owner entered into a mapping agreement, in which the owner agreed to perform work "substantially in accordance with" the requirements set forth in a NYC Department of Transportation ("DOT") letter dated January 23, 1998, and said mapping agreement was accepted by CPC on July 16, 1998; and

WHEREAS, DOB issued excavation, foundation and structural framing permits for Building A under Application No. 101236002 on July 1, 2002, and under Application Nos. 103177893 and 103173888 on August 1, 2002, and a builder's pavement plan permit on July 24, 2002 (collectively, the "DOB permits"); and

WHEREAS, appellant claims that the special permits and the mapping agreement contain a condition providing that the developer of the premises must undertake the work necessary to connect Riverside Boulevard to 72nd Street in conjunction with the construction of Building A, as well as close the off ramp from Riverside Drive to 72nd Street, and further claims that DOB must ensure that construction of the road connection, and the ramp closure, occur simultaneously with the building construction; and

WHEREAS, by letter dated November 5, 2002, appellant's representative requested of DOB that work not proceed on Building A until it was established how and when construction of the roadway connection would occur; and

WHEREAS, by letter dated December 19, 2002, appellant's representative requests that the DOB permit issued on or around November 25, 2002 be revoked, and by letter January 30, 2003, repeated this request; and

WHEREAS, appellant also challenges as improper DOB's approval of amended plans for Building A in or around November 25, 2002, in that DOB did not require simultaneous construction of the road connection as a condition of approval of said amendment; and

WHEREAS, appellant maintains that since the road connection is not occurring simultaneously with construction of Building A, the DOB permits were issued improperly and must be revoked; and

134-03-A

WHEREAS, appellant alleges that she will “suffer the additional air pollution and traffic congestion” from construction of Building A, if the ramp is not closed and the road connection is not constructed; and

WHEREAS, DOB states that the special permits contains no provision mandating simultaneous construction of Building A and the road connection or closure of the ramp, but rather that the special permits merely reference the road connection and ramp closure as necessary; and

WHEREAS, DOB notes that no CPC approved plans related to the special permits mandate that the ramp closure or construction of the road connection occur simultaneously; and

WHEREAS, DOB maintains that the restrictive declaration does not require that ramp closure or construction of the road connection occur prior to DOB permitting of Building A; and

WHEREAS, DOB further maintains that the mapping agreement does not require prior or simultaneous construction of the road connection or ramp closure with Building A, in that the DOT letter, as incorporated into the mapping agreement, only contains the statement that street improvements are to be “completed in phases generally in conjunction with the associated phase of development”, and that such language only sets forth an approximate time frame, and in no way imposes any restrictions on DOB’s permitting process; and

WHEREAS, DOB notes that while the new building plans for Building A do show the building fronting on Riverside Boulevard, the permit approval only relates to the subject zoning lot’s compliance with the laws of which DOB has jurisdiction, and not the streets outside of the zoning lot; and

WHEREAS, DOB further notes that the issued builder’s pavement plan permit also does not require that the streets be laid out prior to permits being issued for construction of Building A, but only prior to issuance of a certificate of occupancy; and

WHEREAS, DOB argues that the FEIS did not place conditions on the issuance of permit for construction of Building A, and, further, that DOB has no authority to enforce provisions of an environmental impact statement; and

WHEREAS, the record shows that DOB approved amended plans for the construction of Building A on November 25, 2002, but that said amended plans related to changes in the individual layout of the units within the building, and had no impact on the prior

DOB authorizations related to the foundation and structural work for Building A; and

WHEREAS, the Board notes that CPC - the agency that issued the special permits, participated in the mapping agreement, and reviewed the FEIS - by letter dated August 5, 2003, supported the position of DOB in the instant appeal; and

WHEREAS, based on its review of the evidence, the Board finds that the subject DOB permits were properly issued, and that there is no requirement in any of the above-mentioned agreements, special permits or related actions, that the ramp be closed or the roadway be constructed prior to their issuance; and

WHEREAS, consequently, the Board finds that, based on the evidence, the March 20, 2003 DOB determination described above was reasonable; and

Therefore, it is resolved that the final determination of the New York City Department of Buildings, dated March 20, 2003, is upheld and this appeal is denied.

Adopted by the Board of Standards and Appeals, October 21, 2003.

A true copy of resolution adopted by the Board of Standards and Appeals, October 21, 2003.

Printed in Bulletin No. 43-44, Vol. 88.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.