

143-01-BZ

CEQR #01-BSA-131M

APPLICANT - Sheldon Lobel, P.C., for Thomas R. Birchard and Sarah R. Haddock, owners.

SUBJECT - Application April 16, 2001 - under Z.R. §72-21 to permit, in an R7-2 zoning district, the legalization of an existing veterinary clinic (Use Group 6B) located at the cellar level, which is contrary to Z.R. §22-00.

PREMISES AFFECTED - 348 East 9th Street, northeast corner of 1st Avenue, Block 450, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES -

For Opposition: John Yacovone, Fire Department.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Korbey, Commissioner Caliendo, and Commissioner Miele.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated March 16, 2001 acting on Application No. 102953476 reads:

"1) Use Group 6B, a veterinary hospital is not permitted in an R7-2 zoning district. It is contrary to 22-00 Z.R."

WHEREAS, a public hearing was held on this application on January 8, 2002 after due notice by publication in the *City Record*, and laid over to February 5, 2002, March 5, 2002, April 9, 2002 and then to May 7, 2002 for decision; the decision was deferred until May 21, 2002 and then to June 4, 2002; on August 6, 2002 the case was re-opened and laid over for continued hearing on September 24, 2002 when it was closed, and a decision date was set for November 12, 2002 for decision; and

WHEREAS, Community Board No. 3 in Manhattan has recommended approval of the subject application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Vice-Chair Satish Babbar, Commissioner Peter Caliendo and Commissioner Mitchell Korbey; and

WHEREAS, this is an application under Z.R. §72-21, to permit, in an R7-2 zoning district, the legalization of an existing veterinary clinic (Use Group 6B) located at the cellar level, which is contrary to Z.R. §22-00; and

WHEREAS, the subject site is located on the north side of East 9th Street, improved with a six-story multiple dwelling containing approximately

12,236 square feet of floor area; and

WHEREAS, the applicant notes that the majority of the premises houses an as-of-right residential use, but that the cellar and half of the first floor presently house a veterinary clinic; and

WHEREAS, originally the proposal sought to legalize the veterinary use at the cellar and half of the first floor, but in response to Board concerns, the proposal has been modified, and only the cellar level will be occupied by the veterinary use with the first floor reverting to an as-of-right residential use; and

WHEREAS, the applicant represents that the subject cellar level is burdened by an unusually low height of just 5'-6" at its lowest point (which runs the entire length of the cellar) and approximately 8'-0" at its highest point; and

WHEREAS, further, the subject cellar space has historically housed a non-residential and medical-related use; and

WHEREAS, the applicant contends that the existing and proposed veterinary hospital use is quite similar to the legal, medical office use; and

WHEREAS, therefore, the Board finds that the aforementioned unique physical conditions and the site's history with a veterinary hospital use, present an undue hardship in developing the site with a conforming development; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that developing the cellar with a conforming use would not yield a reasonable return; and

WHEREAS, the applicant asserts that many below-grade and ground floor commercial and retail uses exist on this portion of East 9th Street; and

WHEREAS, the applicant notes that this is a legalization and that no animals will board at the premises, therefore there are no adverse affects to the surrounding neighbors; and

WHEREAS, therefore, the Board finds that this action, as modified, 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 hardship herein was not created by the owner or a predecessor in title; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no

foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement.

Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21, to permit, in an R7-2 zoning district, the legalization of an existing veterinary clinic (Use Group 6B) located at the cellar level, which is contrary to Z.R. §22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 30, 2002"-(2) sheets; and on further condition;

THAT the first floor at the premises shall revert to a conforming use within one (1) year from the date of this grant;

THAT there shall be no boarding of animals at the premises;

THAT the term of this variance shall be limited to five (5) years from the date of this grant, expiring November 12, 2007;

THAT a new Certificate of Occupancy shall be obtained within one year of this grant;

THAT the above conditions shall appear on the Certificate of Occupancy;

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

Adopted by the Board of Standards and Appeals, November 12, 2002.