

143-01-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Thomas R. Birchard, owner.

SUBJECT – Application February 21, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the legalization of a veterinary clinic (Use Group 6B) located at the cellar level contrary to Z.R. §22-00 which expired on November 12, 2007 and to permit the legalization of the enlargement of the use into the front, eastern unit on the first floor; Extension of Time to Obtain a Certificate of Occupancy which expired on November 12, 2003; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 348 East 9th Street, Block 450, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 20, 2017, acting on Alteration Application No. 122813278, reads in pertinent part:

“Proposed Veterinarian’s Office in R8B zoning district is not permitted pursuant to ZR 22-10”; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of time to obtain a certificate of occupancy, an amendment and an extension of term of a variance, previously granted by the Board, which expired November 12, 2007; and

WHEREAS, a public hearing was held on this application on March 6, 2018, after due notice by publication in *The City Record*, and then to decision on March 6, 2018 same date; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of East 9th Street, between Second Avenue and First Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along East 9th Street, 94 feet of depth, 2,348 square feet of lot area and is occupied by a six-story, with cellar and sub-cellar, mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 12, 2002, when, under the subject calendar number, the Board granted a variance to permit the operation of a veterinary office in Use Group 6B located at the cellar level on condition that the first floor of the subject site revert to a

conforming use within one (1) year, by November 12, 2003, that there be no boarding of animals at the subject site, that the term of the grant be for five (5) years, expiring November 12, 2007, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by November 12, 2003; and

WHEREAS, the time to obtain a certificate of occupancy and term of the variance having expired, the applicant now seeks an extension of time to obtain a certificate of occupancy and an extension of term of the variance as well as a waiver of the Board’s Rules of Practice and Procedure to allow the late filing of this application; and

WHEREAS, in addition, the applicant proposes an amendment of the variance to permit a portion of the first floor to be used as a veterinary office in Use Group 6B; and

WHEREAS, in response, the Board directed the applicant to demonstrate that the proposed amendment does not implicate the findings of ZR § 72-21; and

WHEREAS, the applicant states that there are unique physical conditions—the unusually low ceiling height in the cellar, history of use as a veterinary hospital and interior layout of the existing building—at the subject site that create practical difficulties or unnecessary hardship; and

WHEREAS, the applicant also submitted a financial feasibility study demonstrating that there is no reasonable possibility that as-of-right development of the cellar and first floor would bring a reasonable return; and

WHEREAS, the applicant states that the proposed amendment will not alter the essential character of the neighborhood or district, noting that prevalence of ground-floor commercial uses in the vicinity and the historic use of the subject site, fully enclosed within the building, for medical-related uses; and

WHEREAS, the applicant states that the size of the cellar and arrangement of space within the building have not been created by the owner or a predecessor in title; and

WHEREAS, the applicant states that the financial feasibility study further demonstrates that the proposed amendment represents the minimum variance necessary to afford relief; and

WHEREAS, at hearing, the applicant provided evidence that residential tenants in the building support this application and have not been adversely affected by the operation of a veterinary office within the subject building; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board’s Rules of Practice and Procedure, extension of time to obtain a certificate of occupancy, amendment and extension of term of a variance are appropriate with certain conditions as set forth below; and

WHEREAS, the Board notes that the term of this

143-01-BZ

grant has been reduced to reflect the period of time that the veterinary office has operated without a variance.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated November 12, 2002, so that as amended this portion of the resolution shall read: “to *permit* an extension of time to obtain a certificate of occupancy, an amendment and an extension of term of fifteen (15) years, expiring November 12, 2022; *on condition* that all work and site conditions shall conform to the Board-approved plans; and *on further condition*:

THAT the term of this grant shall be limited to fifteen (15) years, expiring November 12, 2022;

THAT the use permitted by this grant shall be limited to a veterinary office in Use Group 6B;

THAT there shall be no boarding of animals at the subject site;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by March 6, 2019;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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 plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, March 6, 2018.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 6, 2018.
Printed in Bulletin No. 11, Vol. 103.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

