

198-98-A

APPLICANT - Jack Lester, Esq., for The Coalition for a Livable Westside; Madeline Polayes, President.

OWNER OF PREMISES: Hudson Waterfront Associates.

SUBJECT - Application April 28, 1998 - an appeal for a revocation of a builder's pavement plan, approved by the Department of Buildings on May 5, 1997, for failure to construct the road in accordance with ULURP approvals. PREMISES AFFECTED - Riverside Drive South, bounded by West 65th - West 69th Streets, The Hudson River and West End Avenue, Block 1171, Lot 1, Borough of Manhattan.

APPEARANCES -

For Opposition: Gary R. Tarnoff, Department of Buildings, Gary R. Tarnoff.

ACTION OF THE BOARD - Appeal Denied.

THE VOTE TO GRANT -

Affirmative:.....0

Negative: Chairman Chin, Vice-Chair Bonfilio, Commissioner Korbey and Commissioner Joseph.....4

THE RESOLUTION -

WHEREAS, the letter from the Commissioner of Buildings dated April 2, 1998, reads, in pertinent part:

"This letter responds to the January 5, 1998 letter of Jack L. Lester, Counsel to Coalition for a Livable Westside, Committee for Environmentally Sound Development, seeking revocation of the Department of Building's approval of the Builder's Pavement Plan in connection with the Riverside South Project and the January 28, 1998 letter of Rosenman & Colin, counsel to Hudson Waterfront Associates, owners of the Riverside South Development, in opposition to Mr. Lester's request. This letter further constitutes confirmation for the purposes of an appeal to the Board of Standards and Appeals of the Department of Building's approval of the Builders's Pavement Plan on May 5, 1997." ; and

WHEREAS, a public hearing was held on this application on August 11, 1998, after due notice by publication in the Bulletin and then laid over to September 29, 1998 and then to November 17, 1998 for decision; and

WHEREAS, the premises and the surrounding area had several site and neighborhood examinations by a committee of the Board consisting of Chairman James Chin, Vice Chair Paul Bonfilio, R.A., Commissioner Mitchell Korbey, and Commissioner Cecil Joseph; and

WHEREAS, the site is located within an C2-5, C4-2F, C4-7, & R10 Zoning District and is presently improved with two mixed-use structures and an elevated roadway known as "Riverside Drive South"; and

WHEREAS, this is an appeal seeking revocation of a builder's pavement plan approved by the New York City Department of Buildings for Phase I of Riverside Drive South for alleged failure to construct the roadway in accordance with the Uniform Land Use Review Procedure (hereinafter known as ULURP) approvals; and

WHEREAS, the issue before the Board in the instant appeal is whether anything contained within the ULURP approvals with regard to the above referenced project precludes the construction of the Riverside Drive South Roadway on fill; and

WHEREAS, pursuant to Local Law 65 (1996) the New York City Department of Buildings maintains the authority to review certain street pavement plans which are done in accordance with building construction; and

WHEREAS, on or about June 27, 1996 the New York City Department of Transportation (DOT) approved the Builder's Pavement Plan (hereinafter known as BPP) for Phase I of the project, at that time jurisdiction of such projects was under DOT; and

WHEREAS, on or about May 5, 1997 the Department of Buildings approved a revised version of the BPP; and

WHEREAS, the aforementioned revision involved an approval in the change of the width of the proposed roadway and had no effect on the decision to build on fill, as that was already approved by DOT; and

WHEREAS, the appellants contend that the City Planning Commission's (hereinafter known as CPC) approvals and City Council Resolutions set forth conditions that explicitly require construction of the Riverside Drive South on viaduct; and

WHEREAS, the CPC represents that it does not have the authority to, nor did its' approvals attempt to, require specific construction techniques for the proposed roadway; and

WHEREAS, the CPC further represents that it leaves matters, such as determination of construction techniques, to agencies with the requisite technical expertise to address such matters; and

WHEREAS, evidence in the record indicates that the ULURP approvals require the construction of an elevated roadway and leaves the determination on the methodology of construction to the implementing agency; and

WHEREAS, evidence in the record indicates that the said approvals do not require that the subject roadway be built on an elevated viaduct, but simply require that the roadway be constructed in accordance with plans prepared by Skidmore Owings & Merrill (plans filed with the ULURP applications) and in accordance with the Restrictive Declaration; and

WHEREAS, evidence in the record indicates that the road that is shown on the plans is schematic and illustrative, and as such does not reflect a viaduct or a design requirement to build on a viaduct; and

WHEREAS, the Restrictive Declaration states, in part, "Declarant shall develop and convey the New Mapped Streets to the City substantially in accordance with the Mapping Agreement" (Restrictive Declaration §5.01 at page 75); and

WHEREAS, the Mapping Agreement states, in part, that "The Developers agree at their sole cost and at no cost to the City to improve the New Mapped Streets and

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Vehicular and Pedestrian Public Access Easements, to perform the work and comply with the requirements of City agencies as set forth in Exhibits I,J,K and L annexed hereto.."; and

WHEREAS, exhibit I (letter from NYC DOT) states in pertinent part as follows that "The applicant shall build the entire newly mapped Riverside Drive South as follows... (ii) on fill from said northerly line of the West 69th Street public access easement to West 59th Street..."; and

WHEREAS, the Board finds that there is nothing within the ULURP approvals that precludes the construction of Riverside Drive South Roadway on fill; and

WHEREAS, the Board finds that the approval of the BPP allowing the elevated Riverside Drive South to be constructed on fill was proper;

Therefore, it is resolved that the decision of the Buildings Commissioner dated April 2, 1998, upholding the approval of the BPP, is affirmed and the appeal is denied.

Adopted by the Board of Standards and Appeals, November 17, 1998.

A true copy of resolution adopted by the Board of Standards and Appeals, November 17, 1998.
Printed in Bulletin No. 46-47, Vol. 83.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

