

28-05-A

APPLICANT – Alex Ng

OWNER OF PREMISES: Bill Petit

SUBJECT – Application February 17, 2005 – Appeal seeking to challenge the Department of Building's determination that a fenced refuse area in any yard or open space does not violate any Building Code or Zoning Resolution.

PREMISES AFFECTED – 72-02 Ridge Boulevard, a/k/a Flagg Court, Block 5906, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Opposition: Mark Davis.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown.....3

Recused: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Brooklyn Borough Commissioner of the NYC Department of Buildings (“DOB”), dated December 21, 2006 (the “Final Determination”); and

WHEREAS, the Final Determination was issued in response to a request dated January 11, 2005 from appellant Alex Ng (“Appellant”) for a final determination with respect to three issues: 1) the legality of the storage of garbage by Flagg Court (the “Premises”) in an “open fenced-in area” on 73rd Street, 2) mislabeling of this area as a “temporary garbage storage site,” and 3) an order for the restoration of a “boundary fence” to its pre-2002 condition at the Premises; and

WHEREAS, the Final Determination states:

I am in receipt of your July 24, 2005 letter concerning a fenced refuse area at 7202 Ridge Boulevard in Brooklyn (the “subject premises”). Contrary to the first assertion in our letter, the owners of the subject premises need not store garbage in their cellar; there is simply no such requirement either in the building code or zoning resolution requiring such storage. The mere fact that the subject premises has a certificate of occupancy that authorizes storage in the cellar does not impose a requirement upon the owners to store their refuse there. Furthermore, a fenced refuse area in any yard or open space is not in violation of any zoning requirements, either under ZR 23-44, or otherwise.

Your second assertion, that the owners of the subject premises must eliminate a “concave [fence] area in the private property,” is also mistaken. There is no legal requirement that property owners extend their fence(s) to the property’s lot line. Accordingly, the concave

area at issue does not constitute any violation.

Since the fence areas at issue are not over six feet tall, and because they constitute no zoning or building code violations (as explained above), they are not illegal.

WHEREAS, the Appellant challenges DOB’s determination that it lacks jurisdiction over any of the alleged violations at the Premises that Appellant cites; and

WHEREAS, a public hearing was held on this appeal on May 8, 2007, after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, Commissioner Hinkson recused herself from the instant Appeal; and

WHEREAS, DOB has been represented by counsel in this appeal and the Appellant has represented himself; and

THE APPELLANT

WHEREAS, the Appellant is a resident of 166 73rd Street, Brooklyn, whose residence faces 7202 Ridge Boulevard where the alleged violations exist; and

WHEREAS, Appellant states that his (as well as his neighbors’) enjoyment of his home has been impacted by the storage of garbage at the Premises; and

PROCEDURAL HISTORY

WHEREAS, on January 29, 2003, DOB issued a violation to Flagg Court Owners Corp. (“Flagg Court”), the owners of the Premises, for erecting a four-sided, approximately eight-foot high, roofed chain link fence structure (the “fenced refuse area” at the Premises without the required DOB permit; and

WHEREAS, on June 26, 2003, DOB issued violations to Flagg Court for failure to comply with DOB permit requirements and illegal occupancy (both for the fenced refuse area); and

WHEREAS, on August 1, 2003 Flagg Court received DOB permit no. 301573991 (the “Permit”) to relocate the fenced refuse area inside the Premises’ property line; and

WHEREAS, on November 13, 2003, DOB revoked the Permit for failure to address zoning objections DOB had issued against the permit in September 2003; and

WHEREAS, on December 11, 2003, DOB issued a violation to Flagg Court for failing to have a permit for the fenced refuse area; and

WHEREAS, on January 14, 2004, DOB rescinded the revocation of the Permit after Flagg Court amended the Permit to remove the roof of the fenced refuse area; and

WHEREAS, on February 23, 2004, DOB signed off on the job authorized by the Permit; and

WHEREAS, on December 2, 2004 DOB revoked the Permit because the 8-foot high fence violated the Building Code and Zoning Resolution; and

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WHEREAS, in or about December 2004 the fenced refuse area was lowered to a height of six feet; and

WHEREAS, on or about January 11, 2005, Appellant wrote to DOB for a final determination as to: 1) the legality of the fenced refuse area; and 2) whether the boundary fence at the Premises must be restored to prevent “illegal roadside drop-offs”; and

WHEREAS, on January 21, 2005, DOB Brooklyn Commissioner Susan Hinkson issued a final determination letter (the “Hinkson Letter”) in response to Appellant’s January 11 letter. The Hinkson Letter stated that the six-foot high fenced refuse area was not illegal and that Appellant’s complaints about garbage on the sidewalk were properly addressed to the NYC Department of Transportation or the NYC Department of Sanitation; and

WHEREAS, on February 16, 2005 Appellant filed the instant Appeal with the Board; and

WHEREAS, at the suggestion of the Board, on July 24, 2005 Appellant wrote to DOB asking for a second final determination with respect to compliance with Flagg Court’s Certificate of Occupancy, restoration of the lot-line fence and the legality of Flagg Court’s storage of garbage in the refuse storage area; and

WHEREAS, on December 21, 2006 DOB Brooklyn Borough Commissioner Magdi Mossad wrote a letter (the “Final Determination”) in response to Appellant’s July 24 letter in which he explained that 1) the refuse area is neither a zoning nor a building code violation; 2) there is no legal requirement for Flagg Court to store garbage in its cellar; and 3) there is no legal requirement that the lot line fence be restored; and

DISCUSSION

A. Legality of the fenced refuse area

WHEREAS, Appellant argues that the fenced refuse area is in violation of both the Building Code and the Zoning Resolution; and

WHEREAS, Appellant cites no specific provision of the Building Code that would prohibit the fenced refuse area; and

WHEREAS, in the absence of any citation to any Building Code requirement by Appellant that would prohibit the fence, the Board finds that there is no Building Code prohibition against the existing fence; and

WHEREAS, Appellant initially argued that Flagg Court is required to reconstruct the fence at the lot line, which had the effect of helping to confine the garbage stored within the refuse storage area; and

WHEREAS, as noted by DOB, Appellant cites no legal prohibition against the prior removal of the lot-line fence or any requirement that Flagg Court restore the previously existing lot-line fence; and

WHEREAS, in the absence of any evidence that there is a DOB-enforced requirement that removal of the lot-line fence was contrary to law or that the lot-line fence be reconstructed, the Board finds that Flagg Court’s removal of the lot-line fence was not contrary to law and that there is no requirement that it be reconstructed; and

WHEREAS, Appellant argues that the refuse storage area is not permitted in the required yards; and

WHEREAS, DOB cites ZR § 23-44(a) in support of the position that the 6-foot fence is permitted in “any [required] yard or rear yard equivalent”; and

WHEREAS, the Board finds that there is no prohibition against the fence forming the refuse area in the required yards; and

WHEREAS, Appellant argues that the refuse storage area is prohibited under the provisions of the Special Bay Ridge Zoning District regulations; and

WHEREAS, in support of this argument Appellant cites ZR § 114-262(c); and

WHEREAS, as DOB observes, ZR § 114-262(c) was repealed in 2005; and

WHEREAS, even if ZR § 114-262(c) had not been repealed, it would not apply to the Premises since the Premises are not within a “major street block front within the Avenue Preservation Area – 1 (Area B); and

WHEREAS, Appellant also argues that the “General Purposes” section of the Special Bay Ridge Zoning District, which states that “the ‘Special Bay Ridge Zoning District’ established in this Resolution is designed to promote and protect the public health, safety and general welfare” therefore requires Flagg Court to take some action with respect to the storage of garbage in the refuse storage area; and

WHEREAS, the Board finds that, like other “General Purposes” sections in the ZR, this provision explains the goals of the following operative sections, and the language cited by Appellant is merely aspirational and establishes no enforceable requirements with the Special Bay Ridge Zoning District; and

WHEREAS, the Board finds this argument by Appellant to be unpersuasive and misplaced; and

B. Compliance with Certificate of Occupancy

WHEREAS, Appellant argues that Flagg Court’s Certificate of Occupancy, which authorizes storage of garbage in the cellar, in fact requires Flagg Court to store its garbage in the cellar and that therefore storage of garbage in the refuse area constitutes a violation; and

WHEREAS, DOB states that the Certificate of Occupancy is permissive rather than restrictive; and

WHEREAS, the Board agrees that the authorization to store garbage in the cellar provided by Flagg Court’s Certificate of Occupancy does not impose any requirement on Flagg Court to do so; and

C. Appellant’s Other Arguments

WHEREAS, Appellant claims that it is a violation for the refuse storage area to be labeled as “temporary”; and

WHEREAS, Appellant cites no authority for this proposition; and

WHEREAS, Appellant alleges violations of various New York City laws and regulations, including

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the NYC Administrative Code §§ 17-142, 24-102, 27-2018 to 19, 27-2021 and 16-120 and the Multiple Dwelling Law §§ 80-81, 305, 309(d) and 300(1); and

WHEREAS, DOB states that it has no jurisdiction with respect to these provisions, but rather that they are within the jurisdiction of other City agencies; and

WHEREAS, without ruling on whether the refuse storage area constitutes a violation of any of the provisions cited by Appellant, the Board agrees that DOB is not authorized to enforce them; and

WHEREAS Appellant cites various cases that have come before the Board in which conditions have been imposed with respect to indoor rooms for the storage of refuse or garbage; and

WHEREAS, Appellant argues that the Board should therefore impose a similar requirement on Flagg Court to store its garbage indoors in the instant matter; and

WHEREAS, the cases cited by Appellant were ones in which parties came before the Board seeking grants in connection with which the Board is authorized to impose such conditions; and

WHEREAS, the Board is not so authorized in the instant Appeal; and

WHEREAS, Flagg Court is not a party to any case before the Board; and

WHEREAS, the Board lacks jurisdiction to impose any requirements on Flagg Court; and

WHEREAS, Appellant argues without citing any applicable provision of law that DOB should regulate the height of the garbage piled in the refuse storage area and not merely the height of the fence; and

WHEREAS, DOB states that nothing in its regulations authorizes it to regulate garbage; and

CONCLUSION

WHEREAS, the Board acknowledges that the Appellant's use and enjoyment of his home may have been adversely affected by the outside storage of garbage by Flagg Court; and

WHEREAS, the Board has advised Appellant it the relief it seeks may be within the jurisdiction of other City agencies; and

WHEREAS, Appellant indicated at the hearing on the instant Appeal that he has not sought relief from other City agencies; and

WHEREAS, the Board finds that Appellant does not offer any basis for DOB to take any action with respect to the refuse area or the garbage stored therein; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Brooklyn Borough Commissioner, dated January 21,

A true copy of resolution adopted by the Board of Standards and Appeals, June 19, 2007.

Printed in Bulletin No. 24, Vol. 92.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

2006, determining that there is no violation over which DOB has jurisdiction in connection with the storage of garbage at the Premises and encouraging Appellant to seek relief through other City agencies, is hereby denied.

Adopted by the Board of Standards and Appeals, June 19, 2007.