

310-00-A

APPLICANT - Helena Rosenwasser.

OWNER OF PREMISES: Michael Koegel.

SUBJECT - Application December 22, 2000 - an appeal challenging the Department of Buildings' determination dated November 28, 2000, in which the Department refused to revoke the approval and permit for Applic. No. 300936192, regarding side yards at the subject premises, on the basis that it finds no substantial reason(s) at the present time.

PREMISES AFFECTED - 1911 Avenue L, between Ocean Avenue and East 19th Street, Block 6730, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES -

For Applicant: Irving E. Minkin.

For Administration: Mona Sehgal, Department of Buildings.

ACTION OF THE BOARD - Appeal denied.

THE VOTE TO GRANT -

Affirmative: Chairman Chin, Vice-Chair Bonfilio and Commissioner Caliendo:3

Negative:0

Absent: Commissioner Korbey,1

THE RESOLUTION -

WHEREAS, the decision of the Department of Buildings, dated November 28, 2000 acting on Alt. Applic. No. 300936192 refused to revoke the approval of permits for work at the above premises:

WHEREAS, a public hearing was held on this application on February 27, 2001 after due notice by publication in *The City Record*, laid over to May 22, 2001 and then to June 12, 2001 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting Vice-Chair Paul Bonfilio, R.A., Commissioner Mitchell Korbey, and Commissioner Peter Caliendo; and

WHEREAS, this is an appeal challenging a decision of the Department of Buildings (DOB), refusing to revoke permits issued pursuant to Alt. Application Number 300936192; and

WHEREAS, the subject premises is improved with a three story detached two family dwelling with cellar located in an R6 residential district which prior to the proposed conversion had been a non-complying building because both side yards did not provide the minimum required width; and

WHEREAS, petitioner's lot at 1909 Avenue L, Block 6730, Lot 9, is adjacent to, and to the west of the premises; and

WHEREAS, on August 15, 1999, the Department of Buildings approved Application No. 300936192, and on November 1, 1999, the Department issued the work permit authorizing conversion of the premises from a two family dwelling with a home occupation medical office to a community facility medical office

on the cellar and first floors and a two family dwelling on the second and third floors; and

WHEREAS, the permit also permitted an extension of the second and third floors to the western lot line and rear lot line, the removal of a bay window in the first floor at the eastern side of the premises and two extensions at the rear of the premises; and

WHEREAS, on December 17, 1999, a Post Approval Amendment was filed to provide shoring plans for the north, west, and rear of the premises; and

WHEREAS, from October 29, 1999 through October 16, 2000 the petitioner filed complaints, requesting revocation of the permit based on alleged violations of a private easement agreement as well as provisions of the Administrative Code and the Zoning Resolution; and

WHEREAS, in response to these complaints on December 9, 1999, March 22, 2000 and November 28, 2000, the Department of Buildings responded that the permit was lawfully issued and that the issues raised in the petitioner's complaint did not warrant revocation; and

WHEREAS, on February 7, 2001 a second Post Approval Amendment and plans were filed to reflect attic layout, roof configuration and plumbing changes at the premises; and

WHEREAS, the petitioner contends that the permitted extensions of the second and third floors and the placement of two swinging doors at the premises encroached on her driveway easement and that the Department of Buildings had knowledge of the existence of her private easement because the plot plan on the permit application approved August 21, 1999 labeled a 3' Driveway Easement area within the subject premises and a 5' Driveway Easement area within the petitioner's lot; and

WHEREAS, the evidence indicates that no easement was recorded with the Department of Buildings pertaining to either of the two buildings sharing the driveway; and

WHEREAS, the Department of Buildings did not and does require an easement for approval of an application, nor is an easement necessary to comply with the Administrative Code, Zoning Resolution, or any other regulatory provision administered by the department; and

WHEREAS, the Department of Buildings asserts and the Board agrees that the Department has no authority to enforce the terms and conditions of the petitioner's private easement, thus, the alleged encroachment does not render the permit unlawful; and

WHEREAS, the rights under a private easement are not within the jurisdiction of the Department of Buildings; and

WHEREAS, the Board notes that the issue of the private easement is pending judicial determination; and

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WHEREAS, petitioner contends the subject permit improperly allowed a medical office which is constructed out of wood frame material, classified as combustible construction class II-D; and

WHEREAS, the Board finds that §27-107 of the Administrative Code and New York City Charter §645 (b)(2) provide the Buildings Department Borough Commissioner the discretion to vary the Administrative Code regarding building material and allow a medical facility use in an existing combustible construction Group II-D Structure; and

WHEREAS, §27-301 of the Administrative Code takes into consideration the occupancy of the premises; and

WHEREAS, the record indicates that strict compliance with §27-301 of the Administrative Code would impose a practical difficulty to the owner of the subject premises; and

WHEREAS, the Board agrees with the Department of Buildings that the permitted alteration of the subject premises brought the western side yard into

compliance with the minimum side yard requirement of Z.R. §24-35(b) which states that no side yards are required of community facility buildings in R-6 districts; and

WHEREAS, the Board disagrees with the petitioner's contention that the alteration is out of compliance with the eastern side yard requirement of Z.R. §24-35(b) because as stated above side yards are not required for community facility buildings in R-6 districts; and

WHEREAS, the Board determines that the issue of the private easement is beyond the jurisdiction of the Department of Buildings and that the Buildings Department reasonably acted within its discretion when issuing the subject permit.

Resolved, that decision of the Borough Commissioner, dated November 28, 2000 acting on Alt. Applic. No. 300936192 is upheld and the appeal is denied.

Adopted by the Board of Standards and Appeals,
June 12, 2001.

A true copy of resolution adopted by the Board of Standards and Appeals, June 12, 2001.
Printed in Bulletin No. 25, Vol. 86.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

