	New York State Division of Housing and Community Renewal Gertz Plaza 92-31 Union Hall St. Jamaica, NY 11433 Web Site www.nyshcr.org	Docket Number: **ZH230002OD thru ZH230006OD**

Order Denying Permission to Modify Services

Mailing Address Of Tenant:	Mailing Address Of Owner/Owner's Rep:
Various – See Attached List **10, 20, 30 Columbia Place** **24, 32 Joralemon Street** **Brooklyn, NY 11201**	**Joralemon Realty LLC c/o** **Cozen O'Connor** **277 Park Avenue 20th Floor** **New York, NY 10172 Attn. Kenneth K. Fisher**

Subject Building (If Different From Tenant's Mailing Address)		
(Number and Street)	(Apt. No.)	(Municipality)
Riverside Apartment Complex	**Various**	**Brooklyn, NY**

Applicable Regulations: Section 2522.4 of the Rent Stabilization Code
Section 2202.21 of the NYC Rent & Eviction Regulations

Application

On August 31, 2011, the owner filed a modification of services application regarding the apartment complex known as the "Riverside Apartments" which proposes to modify the courtyard area of the complex and seeks approval of this application and a determination by DHCR establishing a new legal regulated rent that reflects any decrease in services that may be represented by the proposal.

The DHCR history with this courtyard area dates back to 1991 when the prior owner, without approval by DHCR, paved over a majority of the courtyard's open space to construct a parking lot with 31 parking spaces. In May of 2000, the Rent Administrator, based on tenant applications, issued various building-wide rent reduction orders which reduced and froze the complaining tenants rents based upon the courtyard being reduced substantially by the owner paving over a section of the courtyard to use as a parking lot. The owner's PAR was denied (OF230053RO).

The prior owner filed a modification of services application in March 2002. The Rent Administrator in December 2004 granted the owner's application. However, the tenants filed a PAR appealing such order and the current owner withdrew the underlying application. Subsequently, the Deputy Commissioner revoked the order granting the modification of services application in September 2006.

The current owner filed a new modification of services application in April 2008 for a two level garage. The NYC Landmarks commission rejected this plan and the owner filed an amended application in June 2008. The June 2008 application was for single level garage which would be underground. The Rent Administrator in July 2009 denied the owner's application finding that the proposed plan did not ameliorate the situation as access to the proposed underground parking facility went through the courtyard/play area and the increase in vehicular traffic in this small area was greater than what already existed. This was in direct conflict with the intended use of the area and the increase of vehicular traffic would actually be a further negative impact. The owner filed a PAR appealing this decision. In April 2010, the Deputy Commissioner denied the owner's PAR. The owner filed an Article 78 proceeding objecting to the Deputy Commissioner's Order. In May 2011, the Court denied the owner's Article 78 appeal. Owner has subsequently appealed such order which is currently pending in the Appellate Division.

The instant application is the fourth of its kind relating to the subject property although different in that it argues that it either modifies but retains the same level of services or in the alternative, that the plan may limit services which may require under

DHCR's regulations a corresponding permanent rent decrease, although the applicant does not specify a proposed amount. The Tenant's Association in their papers object to the application and claim that as similar relief was denied just three years ago the precepts of res judicata and collateral estoppel must be applied. In addition to a number of other arguments, the Tenant's Association also urges that DHCR should not process the case as the owner has not obtained approved plans for the project and thus DHCR consideration of the plan is premature as there may be changes to the plan before the Department of Buildings approves them.

The only proper way for owners of regulated buildings to terminate a service previously provided is pursuant to an application to DHCR to decrease, modify or substitute required services. Owners must first file either an application to decrease required services with an appropriate reduction of the legal regulated rent, RSC §2522.4(d), and/or file an application to "modify or substitute required services, at no change in the legal regulated rent," RSC §2522.4(e). The difference is that in an application under RSC § 2522.4(d) the owner acknowledges that it is reducing or modifying a service and that the tenants should be compensated for this decrease by having a legal rent reduction. In such cases, DHCR determines the amount of the decrease and lowers the legal rent for all tenants accordingly. Under an application for RSC §2522.4(e) the owner keeps the full service but requests permission to modify it to take advantage of technological development. Since the tenants still have access to a complete service, although in a new form, there is no need to reduce the rent.

Res judicata and collateral estoppel prevent adjudicative bodies from hearing a case which has already been heard or re-deciding issues that have already been determined. In the instant case there are differences in the proposed plan from the previous submission that are significant as well as alternative relief suggested here that is new.

It should be noted that there are no approved plans with the application. However, the ultimate decision made in 2000 is still dispositive of certain issues and cannot and will not be reviewed, to wit, that the present conditions are consonant with a deprivation of services which results in freezing the rent and denial of rent increases until their restoration. The owner has not and does not propose a simple restoration of services. Instead it proposes a longer term, uncertain alternatives which will take much longer to effect if it can effect them at all. Res Judicata and Collateral Estoppel do have as their ultimate goals, the prevention of duplicative and vexatious litigation. While not technically operative with respect to all aspects of this new application, the overall policy reasons behind them do have the lessons here. The scope of what is suggested here is significant and the plans will most likely be subject to change by other State and local agencies as part of their review process.

The proposal provides for a 97 car underground garage, a recreational area designed by landscape architect Lee Weintraub which would essentially be built above the garage, and there are supporting reports regarding the health of the existing trees and a study of noise levels by David Harper and AKRF Engineers respectively.

Discussion

The record in this matter is, in its own way, extensive and has been carefully reviewed. In addition to the submissions an unannounced inspection of the courtyard area and environs was conducted on September 26, 2012.

The plan is to restore the recreational area as a green space by removing asphalt and parking from the ground level and to construct a parking garage for 97 cars below the recreational area. The construction of the garage would result, according to the owner's plan, in a loss of about three percent of the original (pre-service reduction) recreation area.

The proposal calls for almost the entire area to be excavated necessitating the removal of the old growth trees with the garage being constructed below grade and a new recreation area at ground level with the green area revamped and new trees planted which will purportedly grow to heights similar to the existing trees. Further, as noted, the plans have changed once already from an earlier application in response to one of what will be many different areas of government review. However, clearly even if everything goes according to plan, things will get significantly worse for the tenants before they get better.

Generally, the new design if effectuated is an improvement over the last proposal as vehicles entering the area from Joralemon Street would immediately, upon clearing the building line of the driveway, execute a sharp left turn and descend a ramp into the underground garage. While the inspection shows that the turns would have to be tight to accomplish this feat the result would be that the remainder of the area past the garage ramp would be vehicle free.

The trees, noted in prior applications, remain a concern but staff conducting the inspection observed that the noise level in the recreation area from traffic on the Brooklyn-Queens Expressway (BQE) was very high and the inspection was conducted when the existing trees had their full canopy of leaves and on a Holiday, where a religious observance resulted in less traffic than normal.

These factors support that portion of the owner's application pursuant to RSC §2522.4(d) that it should be allowed to proceed with the proposed project with an appropriate permanent rent decrease imposed based upon the proportional decrease in service the tenants will suffer. However, among their other arguments the tenants assert that the application before DHCR is premature. This position makes sense as the owner seeks immediate final and dispositive relief from an unchallenged service restoration order, on the basis of plans it intends to effectuate in the future.

As the tenants point out, the plan is quite complex and due to the location of the property adjacent to the BQE the approvals of a number of City and possibly State agencies will be required before it can proceed to construction. The owner may need licensing to operate a garage open to the public 24/7 in such proximity to residences and there will be a need for plan approval from the NYC DOB, possibly from the Department of Transportation and as contained in the previous application possibly New York State Parks and Historic Preservation.

One can anticipate that during these reviews the various entities may disapprove the plan or require changes for the plan and for permission to excavate proximate to the BQE and the buildings (the diagram for the garage shows very tight tolerances). Without seeing it in final form, DHCR cannot judge the application. Clearly, the actual permitting and approval process will do more to inform DHCR regarding the amount of any permanent rent decrease that should be awarded based on this alternative service as these other approvals will better address the level of impact on the residents.

The owner argues that DHCR should issue an approval as the owner would be subject to a catch 22 situation if each governmental authority which needs to approve the plan refuses to act until each other agency has acted. DHCR in principle recognizes that the owner can legitimately make this kind of application and contrary to the position of the tenants, under DHCR policy the rent will be then increased if granted once the plan is effectuated, recognizing all legal increases since 2000, minus whatever reduction to that number is ordered by DHCR. This is all the more reason why DHCR needs more than is in the application. This plan is complex and there are significant issues to be resolved with other agencies having expertise regarding zoning, construction and excavation proximate to buildings and elevated roadways; all of which will better inform all of the ultimate impact on the tenants as well as the impact to the tenants while these plans are effectuated. This supposed catch 22 is not of DHCR's making but is the consequence of the owner's choice to pursue this ambitious and speculative alternative rather than restoring services in a manner consistent with how the services that were taken away in the first instance.

Decision

Based upon the foregoing, DHCR finds that the application is premature.

Therefore, the application is denied without prejudice to re-filing when the owner has obtained the necessary plans and permits to execute the plan.

If you believe this order is based on an error in law and/or fact, you may file a PAR on DHCR form RAR-2, no later than 35 days after the issuance date of the order. PARs filed after the time limit specified above will be considered late and will be dismissed. Call (718) 739-6400 or visit your local Rent Office and request form RAR-2. This form is also available on our website at www.nyshcr.org.

October 11, 2012
Issue Date

Christopher Dueir
Rent Administrator

Additional Parties:

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