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November 3, 2014

By UPS Overnight

Ira Gluckman, R.A.
Brooklyn Borough Commissioner
New York City Department of Buildings
210 Joralemon Street, 8th Floor
Brooklyn, New York 11201

Re: DOB approval and building permit
Job #320774667 24 Joralemon Street -Brooklyn
Riverside Apartments complex

Dear Commissioner Gluckman:

This office represents the Riverside Apartments Tenants Association (“TA”). I am writing on a matter of extreme urgency with respect to permits which have been issued under the above referenced job number for the demolition and excavation of the historic Riverside Apartments Courtyard, and the construction of an approximately 100 car below ground commercial parking lot. I understand that the Department has issued a notice to the Owner (“Joralemon”) that it intends to revoke these permits. I am writing to bring to the attention of the Department additional documentary support for the revocation of these permits and rejection of the Owner’s application.

This project, involving more than century old buildings, on a lot directly adjoining the triple cantilever retaining wall of the Brooklyn Queens Expressway (“BQE”), on landfill close to the water table, in proximity to the East River harbor,

has been approved by DOB on the erroneous basis that it must be granted “as of right.”

In approving the plans of Joralemon (an affiliate of the notorious Pinnacle organization), presently under a federal court class action order to cease and desist from harassing tenants, and by issuing permits for the work, DOB has, *inter alia*, overlooked the Owner’s misrepresentations concerning the purported “accessory” nature of the parking garage, and has also overlooked the necessity for approval by a host of City and State agencies which oversee the BQE, and the Brooklyn waterfront. The consequence of DOB’s approval and permitting this project, under false premises, has resulted in the green lighting of an environmental disaster waiting to happen.

The Owner Has Failed to Obtain Necessary Approvals from Numerous City and State Agencies

Attached to this letter as Exhibit “A” is an analysis of the garage proposal¹ by the New York Environmental Law and Justice Project (“NYELJP”) (“the Project Report”) which concluded that several glaring problems disclosed by the Owner-commissioned geotechnical report prepared by the engineering firm URS threatened public health and safety, and that the proposal was unlikely to receive the required approvals of, or the issuance of permits by, various City and State supervisory agencies with direct jurisdiction, including, *inter alia*, the New York State Department of Transportation (“NYSDOT”) the New York City Department of Transportation (“NYCDOT”), and the New York City Waterfront Revitalization Program (“WRP”), since, *inter alia*, the excavation of the lot, once part of the East River, could disrupt sandy riverbank soils and land fill, negatively affect the water table below the property, increase the risk of flooding, and threaten the structural integrity of the directly adjacent “triple cantilever” BQE highway segment. The Project Report concluded that the Owner’s plan has the potential to cause harm to the structure of BQE supporting wall and the Riverside buildings, the public and the

¹ The Owner’s present plans contain minor modifications of the location of the entrance ramp to the underground parking lot, but there appears to be no indication in the DOB record that NYSDOT or NYCDOT were involved in any manner in reviewing the present plans.

environment, and was unlikely ever to obtain the necessary approvals.²

The ELPJ's Report's conclusions, were based in large measure upon its analysis of a Geotechnical Report and Foundation Recommendations by URS (Exhibit "B")

The Project Report (Exhibit "A") included an expert opinion and recommendation (Exhibit "C") by Bill Kallman, a structural engineer, personally familiar with the construction of the triple cantilever section of the BQE, who worked for the NYSDOT for 34 years, that the proposed underground garage project should be abandoned. Regarding the implications of the proposed underground garage, Kallman wrote:

The 10 ft easement obtained by the City prior to construction reflects the absolute need to prevent excavation above or around these retaining wall foundation piles. The fact that their length and angle of batter is unknown, and can vary from pile to pile, represents an uncertainty not to be considered lightly. The loss of pile resistance would guarantee a movement of the retaining wall. The result would require an underpinning of the wall to keep further movement in check. The cost of said underpinning might equal or excel the cost of the proposed garage. Therefore, my recommendation is that this proposed underground garage project be abandoned.

The revised URS report, updated on April 3, 2009 (Exhibit "B") is filled with provisos that support the conclusions by the DHCR Rent Administrator and Deputy Commissioner that a determination should not be made without further review by the Agencies with expertise on the issues raised.

² A report by AKRF, Inc. submitted to DHCR by the Owner indicated that a CEQRA study will also be required before any project can be approved.

[I]nstallation of deep foundations at this site could be hampered at some locations should any pre-existing foundations or debris remain below pile cap locations;” (“...some voids were noted under the footing at that location which extended some distance under the building. It is not known whether this feature is unique to this location, or exists at other locations, but if it does, this would serve to *increase the risk of building damage from construction vibrations*”);

It could have an impact on construction as the piles could serve as potential obstructions to driving temporary sheeting for support of excavations or if a deep foundation is used of support the new building. It is recommended that this issue be studied in more detail *as part of the final design process*;

[T]he piles supporting the retaining structure for the access roadway of the BQE may pose as obstructions to installation of a temporary retaining structure along the western side of the site. *Available information regarding those foundations should be analyzed carefully in conjunction with the DOT engineering department to verify that no special construction provisions or restrictions will be required which could impact the project.*

Emphasis supplied.

The Proposed Underground Parking Facility Is Not “As-of Right” Development and Requires a Zoning Variance Because the Garage Is Intended for Commercial Use by Non-Residents of Riverside Apartments

It appears that Owner improperly obtained DOB approval for its plans on the false premise that the proposed underground parking facility is an “as-of-right” construction, thereby eliminating the need for approval by other agencies, including the NYS Department of Transportation or the New York City Waterfront Revitalization Program, or review under SEQRA or CEQRA.

Annexed hereto as Exhibit “D” is a statement by Libby Cooper, AIA, with attendant documentation, disputing the Owner’s misrepresentation, contained in the DOB on-line documentation for this project, that the parking garage is an “accessory” use.

Pursuant to NYC’s Zoning Resolution and relevant case law, a commercial garage in a residential neighborhood is not an “as-of-right” development. Therefore, the proposed project must be reviewed and approved by the Department of City Planning and the City Planning Commission.³ This process will usually require land use and environmental impact statements, approvals from various agencies, and depending on the magnitude of the project, a public review process.

“As-of-right” development is development that complies with the Zoning Resolution and qualifies for a building permit administered by the Department of Buildings.⁴ The Riverside Apartments are located within a coastal boundary zone that is subject to R6 zoning.⁵ R6 is a medium-density residential zone.⁶

According to the Zoning Resolution, an “accessory use” is permitted as-of-right in R6 districts. New York City Zoning Resolution, 22-12. An “accessory use” is defined as:

(a) [a] “use” conducted on the same “zoning lot” as the principal #use# to which it is related . . .and

(b) [a] #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and

³New York City Department of City Planning, Applicant Portal, <http://www.nyc.gov/html/dcp/html/ap/index.shtml> (2014).

⁴Id.

⁵New York City Department of Planning, ZoLa - Zoning and Land Use, <http://gis.nyc.gov/doitt/nycitymap/template?applicationName=ZOLA> (2014).

⁶New York City Department of Planning, Zoning Districts - Residential Districts - R6, <http://www.nyc.gov/cgi-bin/misc/pfprinter.cgi?action=print&sitename=DCP&p=1404917227000>

(c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use#.

New York City Zoning Resolution, 12-10.

An #accessory use# includes “#accessory# off-street parking spaces, open or enclosed.” Id. at 12–10. However the Owner has misrepresented in its application and plans, that construction of this underground parking facility is an #accessory use# within the meaning of Zoning Resolution. The Zoning Resolution clearly states that in order to qualify as an #accessory use#, the off-street parking space must be #accessory#. While the proposed underground garage is enclosed off-street parking space, Joralemon has not shown that the garage is #accessory# to the apartment building. In particular, Joralemon has not established that the underground garage is “clearly incidental to, and customarily found in connection” to a residential apartment building.

In fact, Joralemon is unable to show that the proposed garage is an #accessory use#⁷ to the apartment building because the garage is intended to be a commercial garage, providing the vast majority of its parking spaces to non-residents.

In determining what qualifies as an “accessory use” in a residential zoning district, the focus is on whether the proposed project is customarily and incidental to residential property. Presnell v. Leslie, 3 N.Y.2d 384, 165 N.Y.S.2d 488, (1957). The character of the building determines what are the “customarily incidental uses which are permissible in connection with its use” and the main character of the building is determined by what is its “main, principal and dominant use. . . [t]his, of course, is a question of fact.” Bottino v. Staszn, 38 Misc.2d 100, 103, 237 N.Y.S.2d 463, 466 (Sup. Ct., Queens County 1963) (citations omitted). The Court of Appeals stresses that the nature of the proposed project and the degree of its use are factors that must be also be considered. Presnell supra at 388. The Court also takes into account whether the development will change the character of the

⁷The Zoning Resolution clearly states “[w]hen ‘accessory’ is used in the text, it shall have the same meaning as #accessory use#.” Id.

residential nature of the district, any dangers the development might pose to the residents, and the effect of the proposed project on property values. *Id.* at 389. It is also well-established that uses that are commercial in nature are not accessory uses on residential lots. *See, e.g., id.* at 387 (holding that a 44 foot high television antenna was “more akin to a commercial broadcasting tower” than the conduct of a hobby); Matter of 140 Riverside Drive v. Murdock, 276 A.D. 550, 95 N.Y.S.2d 860 (1st Dept., 1950) (holding that a candy and newspaper counter is not an accessory use of an apartment building); Baddaur v. City of Long Beach, 279 N.Y. 167, 124 A.L.R. (1938) (determining that operation of a one-family private residence as a rooming or boarding house was not a proper accessory use within the residential district). Commercialism “disturbs the quiet and peaceful enjoyment of the home” and is not “customarily incidental and subordinate to the normal enjoyment of an apartment house.” Dellwood Dairy Co. v. New Rochelle, 7 N.Y.2d 374, 376, 197 N.Y.S.2d 719, 720 (1960).

Under this restriction, the Court of Appeals has even rejected the use of properties for personal hobbies that are “akin” to commercialism. Presnell, *supra* at 387–88 (“It is clear that, in the conduct of a hobby, the scale of its operation may well carry it beyond what is customary or permissible.”) The Appellate Division, Second Department, has applied the Court of Appeal’s rationale to reject construction projects with respect to hobbies that are not customarily found in connection with the residential property. Matter of Porianda v. Amelkin, 115 A.D.2d 650, 496 N.Y.S.2d 487 (2d Dept. 1985) (finding that a boathouse was not an accessory use despite the fact that boating was a popular hobby in the neighborhood).

The Zoning Resolution distinguishes between #accessory# parking and #public parking garages# and defines a #public parking garage# as a #building or other structure#:

(a) that provides parking or storage for motor vehicles, but not for commercial or public utility vehicles or the dead storage of motor vehicles; and

(b) some or all of whose parking space are non-#accessory#

New York City Zoning Resolution, 12-10 (emphasis added).

Hence, parking that is limited to the residential tenants of an apartment building can be an accessory use, but parking that primarily caters to non-residents is not accessory to the apartment building. *See, e.g., Henry Hudson Gardens, LLC*, ECB App. Nos. 41477, 45372 (3/36/09) (finding a parking lot for 70 vehicles is accessory to an apartment building when it is used only by residential tenants and no members of the general public use the lot); *Lazzaruolo*, ECB App. No. 35673 (7/29/03) (finding off-street parking spaces accessory to a multiple dwelling when the parking is used primarily for the storage of private passenger vehicles of the residence's occupants).

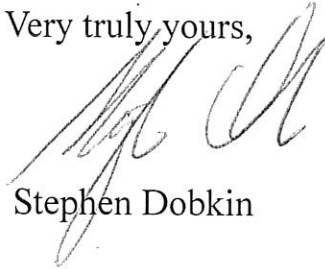
Joralemon's proposed underground garage is not primarily for the use of the tenants and thus, is not an #accessory use# pursuant to the Zoning Resolution. Despite Joralemon's insistence that the tenants welcome the underground parking, the facts on record show otherwise as evidenced by submissions made by the Owner and the TA to the Division of Housing and Community Renewal ("DHCR"). The Owner was able to submit only the statements of the tenants of four (4) of the 155 apartments at the Riverside Apartments complex, stating that the occupants supported the owner's application to modify services by constructing the garage (Exhibit "E").

Since the overwhelming majority of tenants do not want and will not be using parking spaces (See petitions gather by TA, Exhibit "F"), and since the vast majority of parking spaces will not be used by residential tenants (according to Joralemon's affidavits, at most four out of the 97 parking spaces will be used by tenants), this proposed garage is not intended to be used primarily by the tenants. Because the garage will not be used primarily by the tenants of the apartment building, it is commercial in nature as a #public parking garage#.

Joralemon fails to establish that a commercial public underground garage is customarily found with and is incidental to a residential apartment building. To quote the Appellate Division, Second Department, "this failure of proof is fatal." *Matter of Porianda v. Amelkin*, 115 A.D.2d 650, 469 N.Y.S.2d 487 (2d Dept. 1985). Therefore, the garage is not an #accessory use# and accordingly, is not an "as-of-right" development. Joralemon's contention that the proposed project will not require approval from any other agencies is incorrect, as Joralemon will, at the very least, need to get approval from the Department of City Planning and the City Planning Commission.

For the aforesaid reasons, the Riverside Apartments Tenants Association fully supports the revocation by DOB of the permits issued under the above referenced job number and the rejection of Joralemon's application and plans for a commercial underground parking garage.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stephen Dobkin', written over the typed name below.

Stephen Dobkin

cc: Commissioner Rick D. Chandler P.E.
NYC Department of Buildings
280 Broadway, 7th Floor
New York, N.Y. 10007