

CITY PLANNING COMMISSION

March 26, 2012/Calendar No. 1

N120043ZCM

IN THE MATTER OF an application, dated August 18, 2011 and revised January 12, 2012, for a certification pursuant to Section 22-42 of the New York City Zoning Resolution with respect to a skilled nursing facility to be located on West 97th Street between Columbus and Amsterdam Avenues (Block 1852, Lot 5), within Community Board 7, Manhattan .

WHEREAS, Jewish Home Lifecare seeks a certification by the City Planning Commission to the Department of Buildings pursuant to Section 22-42 of the Zoning Resolution of the City of New York that none of the findings which would require a special permit pursuant to Section 74-90 of the Z.R. apply in Community District 7 in the Borough of Manhattan, in connection with the development of a skilled nursing facility to be located on a site on the north side of West 97th Street between Columbus and Amsterdam Avenues (Block 1852, lot 5) (the “Site”) ; and

WHEREAS, Section 22-42 of the Z.R. was enacted in 1973 in order to address a “ massive expansion” in the construction of nursing homes and other residential health care facilities in certain neighborhoods, with overconcentration of such facilities having the potential to create problems of parking and traffic congestion, a heavy demand for services and facilities such as medical and hospital care, a scarcity of available land for general community purposes, and a disruption of the land use balance in the affected communities (See CP-22490, dated December 3, 1973); and

WHEREAS, in response to the potential problems caused by the proliferation of nursing homes at that time, Section 22-42 was enacted to provide that, for any nursing home or health-related facility located within a residence district or any enlargement, extension, or change in use thereof, the City Planning Commission must certify that none of the following conditions exists: (a) the ratio between the number of beds for such uses in existence, under construction or approved toward construction by the appropriate Federal or State governmental agency, to the population of the Community District compared to such ratio for other Community Districts shows a relative concentration of facilities covered in this Section in the affected district; or (b) a scarcity of land for general community purposes exists; or (c) the incidence of construction of facilities for the last three years warrants review over these facilities because they threaten to disrupt the land use balance in the community, and, if one of these conditions exists, to provide further that a Special Permit is required for the nursing home facility pursuant to Section 74-90 of the Z.R.; and

WHEREAS, the Site is located in a Residence District (R7-2) and development of a new skilled nursing facility at this location is subject to review under Section 22-42; and

WHEREAS, Jewish Home Lifecare currently operates a 514-bed skilled nursing facility at a location on West 106th Street between Columbus and Amsterdam Avenues and seeks to relocate its

operations to the Site in a new, state-of-the-art facility with up to 414 beds (the “ New Building”) , with operations at the current location to cease upon completion of the New Building, such that there will be no increase in the number of nursing homes in Community Board 7, Manhattan; and

WHEREAS, in addition to the current Jewish Home Lifecare facility on West 106th Street, there is only one other nursing home facility in Community Board 7, the Kateri Residence at 150 Riverside Drive; and

WHEREAS, for purposes of finding (a), the absence of a relative concentration of residential health care facilities in Community Board 7 resulting from these two existing facilities is evidenced by data maintained by the Department of City Planning which demonstrates: (a) that Community District 7 contains 1,034 beds in nursing homes and residential care facilities to serve a population of 207,700, resulting in a ratio of 5.0 beds per 1,000 residents, which is below the city-wide average of 5.7 beds per 1,000 residents, and (b) that since the new facility will contain approximately 100 fewer beds than the existing campus, the ratio of beds per 1,000 residents in Community Board 7 will as a result of the decommissioning of the current facility be reduced to approximately 4.5, further below the citywide average; and

WHEREAS, other than the instant application, there have been no applications submitted to the Commission pursuant to Section 22-42 for facilities in Community Board 7, Manhattan, since January, 2002 and no new nursing homes or residential health care facilities have been constructed in Community Board 7 during the past three years ; and

WHEREAS, for purposes of finding (c), there is therefore no incidence of construction of residential health care facilities which warrants review pursuant to special permit because they threaten to disrupt the land use balance in the community; and

WHEREAS, in its application, Jewish Home Lifecare states that the conditions under Finding (b) of Section 22-42 (“... a scarcity of land for general community purposes exists...”) do not exist on the basis that, in the absence of a competition for land between nursing homes and other community uses within Community Board 7, the underlying premise for this finding is not present; and

WHEREAS, Jewish Home Lifecare further states in its application that there is no general scarcity of land available for community purposes in Community Board 7 since, for purposes of Section 22-42, land available for community purposes may consist of a new building on a vacant site or an underdeveloped parcel, as well as the purchase or lease of existing buildings or portions of existing buildings, and , with respect to vacant parcels, cites to data showing that as of June, 2011, Community District 7 contained 1.5 million square feet of vacant land (a significant portion of which it acknowledges is associated with open space and streets in the Riverside South/Center Large Scale Development) , and with respect to underdeveloped parcels cites to data showing that as of such date Community District 7 had 524,000 sf of parking facilities; and

WHEREAS, Community Board 7, by Resolution dated February 7, 2012, stated that in its view the conditions set forth in Findings (a) and (c) of Section 22-42 do not currently exist in

Community District 7, Manhattan, but that there exists a “scarcity of land in this District for general community purposes”, such that a special permit is required for the New Building; and

WHEREAS, by letter, dated February 17, 2012, Community Board 7 highlighted, in respect of its February 7, 2012 Resolution, that of the 1.5 million sf of vacant land in the Community District, 1.25 million sf is located in Riverside South, with 1.170 million sf of this amount attributable to open space and streets, and that only 80,000 sf is available for other uses, and that the applicant’s consequent “reliance on ‘underdeveloped’ parcels whose current structures use less than the total permissible floor area as potential sites [for residential care facilities] further confirms the existence of a scarcity of land” and reflects an admission that “such uses must be shoe-horned into other structures since there is no other place for them to go in our District.”; and

WHEREAS, by letter dated February 28, 2012, Jewish Home Lifecare responded to the February 17, 2012 Community Board 7 letter, reiterating its view that “land for general community purposes” includes “both vacant land and underdeveloped parcels, such as a one story building, or parking lot or garage” and noting that “many community facilities seek to locate within an existing building, since they do not have the ability to obtain financing for new construction, and may have immediate space needs that cannot await the completion of a new building”; and

WHEREAS, by letter dated March 1, 2012, Community Board 7 responded to certain points in Jewish Home Lifecare’s February 28 letter, reiterating its view that streets, parks and sites already slated for development should not be counted towards available vacant land in order to evaluate finding (b) and that JHL had not offered any additional evidence for the absence of a scarcity of land “other than the potential for community groups to share unspecified space, [thereby] reaffirming rather than dispelling the existence of scarcity...”; and

WHEREAS, the Commission has considered the application, the Community Board Resolution, the several letters described above, as well as analysis and data presented to it by Department staff, at the Review Session held on March 26, 2012; and

WHEREAS, the Commission notes that the legislative purpose of Section 22-42, as stated in the Commission’s 1973 Report, was “to regulate the trends toward overconcentration in various areas of the City” (CP-22490, P.2), and that, in view of the absence of any current or anticipated trend of proliferation of nursing homes in Community District 7, Manhattan, as well as the fact that the instant application will not result in an increase in the number of nursing homes in the area, there would appear to be no underlying predicate for a finding there is a scarcity of land in the Community District which warrants special permit review of the New Building; and

WHEREAS, the Commission further believes that in predominantly built-up areas of the City such as Community District 7, the number of vacant sites does not constitute the sole measure of whether there is a scarcity of land for purposes of finding (b) and that doing so would provide an inaccurate assessment of the actual opportunities for community facilities to grow and expand within the area, in that that sole reliance upon the amount of vacant land would almost inevitably lead to a finding of scarcity where none may be found based on a more realistic assessment of such opportunities; and

WHEREAS, the Commission notes that, while the Far Rockaway and other neighborhoods in Queens which experienced the significant increase in the number of nursing homes and other facilities in the 1970's which precipitated the adoption of Section 22-42 had tracts of vacant land at the time, Section 22-42 does not by its terms limit the Commission's consideration to land which is vacant; and

WHEREAS, the Commission therefore believes it appropriate to consider the amount and number of underdeveloped parcels in Community District 7, as well as the number and size of existing buildings which currently house or could house community or public facilities; and

WHEREAS, the Commission also believes that , in determining whether a scarcity exists, it may be useful to assess whether new community facilities have been newly constructed on underdeveloped parcels and have newly occupied space within existing buildings or have expanded within existing buildings in recent years, thereby providing a further indication whether opportunities for the growth and expansion of community facilities exist; and

WHEREAS, the Commission has been advised by Department staff of each of the following with respect to Community Board 7, Manhattan:

a. Vacant Sites: There are 24 vacant lots in Community District 7 with 1.7 acres of lot area. This figure excludes City-owned sites as the Riverside South and Riverside Center developments ;

b. Riverside Center/Riverside South: The unbuilt sites at Riverside South and Riverside Center are approved for 332,000 sf of community facility floor area, of which approximately 110,000 sf will be dedicated for a new school;

c. Parking Facilities: There are 24 lots in Community District 7 with a total of 3.9 acres of lot area classified as in use for parking facilities. This calculation also excludes City-owned sites;

d. Other Soft Sites: There are 64 lots in private ownership in Community District 7 not located in historic districts, and also excluding individual landmarks and houses of worship, that meet the Department's criteria for qualifying as 'soft sites'; that is, sites of at least 5,000 sf built to less than half the FAR allowed pursuant to the underlying Zoning District. The soft sites exclude the parking facilities and vacant sites described in a. and c. above;

e. Existing Buildings: The Department's PLUTO records [11v2] indicate that there are 234 privately owned existing buildings within Community District 7, having floor area of approximately 6,328,599 sf that currently house or could house community or public facilities (based on the following Building Class Codes: Hospitals and Health; Theaters; Store Buildings; Houses of Worship; Asylums & Homes; Office Buildings; Places of Public Assembly; and Education);

f. Existing Public Facilities: The Department's PLUTO records [11v2] indicate that there are 25

publicly owned existing buildings within Community District 7, having floor area of approximately 4,062,813 sf that currently house or could house community or public facilities (based on the following Building Class Codes: Hospitals and Health; Theaters; Store Buildings; Houses of Worship; Asylums & Homes; Office Buildings; Places of Public Assembly; and Education);

g. Existing Campuses: The campuses of Fordham Law School and Lincoln center also provide a significant supply of facility space. The 11 tax lots comprising these campuses provide over 1.5 million sf of facility space today according to PLUTO [11v2];

h. Major Alterations: Since 2000, there have been 13 Major Alteration (Alt 1) permits issued or construction completed under previously issued permits for the purpose of conversion of existing space to community facility use or enlargements of existing buildings for expanded community facility use, for the purpose of schools, community centers, daycare facilities, and medical facilities . In some cases, the alteration or enlargement represents a significant amount of community facility space, such as in the case of the Jewish Community Center on Amsterdam Avenue at W. 76th St; and

i. New Buildings: Since 2000, there have been 3 New Building (NB) permits issued for new community facilities in Community District 7. This figure does not include new construction within institutional campuses, such as recent construction on the Lincoln Center and Fordham University campuses; and

WHEREAS, the Commission believes that the above data and information demonstrates that, in addition to vacant land, there exists underdeveloped property and existing buildings within Community District 7 that is available for the development of new community facilities and the expansion of existing facilities, such that there is no scarcity of land available for such purpose;

NOW THEREFORE, the Commission adopts the following Resolution:

RESOLVED, by the City Planning Commission that, based on the considerations described in this report, as of the date hereof, none of the conditions set forth in Findings (a), (b) or (c) of Section 22-42 of the Zoning Resolution exist in Community Board 7 , Manhattan; and be it further

RESOLVED, that Application N120043ZCM , for a certification pursuant to Section 22-42 of the Zoning Resolution is hereby APPROVED.

AMANDA M. BURDEN, FAICP, Chair

**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, MARIA M. DEL TORO, RICHARD W. EADDY,
ORLANDO MARIN, SHIRLEY A. MCRAE, Commissioners**

ANNA HAYES LEVIN, Commissioner, Abstained

RESOLUTION

Date: February 7, 2012

Committees of Origin: Steering, Land Use and Health & Human Services

Re: 125 West 97th Street, Jewish Home Lifecare (Columbus-Amsterdam Avenues.)

Application by Jewish Home Lifecare ("JHL") for a certification by the Department of City Planning pursuant to section 22-42 of the Zoning Resolution concerning 125 West 97th Street, Block 1852, Lot 5, Application No. 120043 ZCM.

Full Board Vote: 37 In favor 0 Against 4 Abstentions 0 Present

This resolution is based on the following facts:

Section 22-42 of the Zoning Resolution provides as follows:

*22-42 Certification of Certain Community Facility Uses
R1 R2 R3 R4 R5 R6 R7 R8 R9 R10*

In all #Residence Districts#, for any nursing homes and health-related facilities or #enlargement#, #extension# or change in #use# thereof, the City Planning Commission shall certify to the Department of Buildings, prior to the filing of any plans by the applicant for a building permit for such #use#, that none of the following conditions applies to the Community District within which such #use# or #enlargement#, #extension# or change in such #use# is to be located:

- (a) the ratio between the number of beds for such #uses# in existence, under construction or approved toward construction by the appropriate Federal or State governmental agency, to the population of the Community District compared to such ratio for other Community Districts shows a relative concentration of facilities covered in this Section in the affected district; or*
- (b) a scarcity of land for general community purposes exists; or*
- (c) the incidence of construction of facilities for the last three years warrants review over these facilities because they threaten to disrupt the land use balance in the community.*

If the Commission finds that one or more of the conditions set forth in this Section applies to the Community District within which such #use# or #enlargement#, #extension# or change in #use# is to be located, a special permit pursuant to Section 74-90 shall be required.

The Department of City Planning referred JHL's application under section 22-42 to Community Board 7/Manhattan for comment.

CB7 held a public hearing on this application on January 17, 2012, in the auditorium of PS 163, which is adjacent to the site which is the subject of JHL's application.

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan finds that:

(1) To the best of CB7's knowledge and understanding, the condition identified in subsection (a) of section 22-42 of the Zoning Resolution does not currently exist in Community District 7/Manhattan [*Vote of Combined Committee Members: 19-6-0-0; Vote of Non-Committee Board Members: 1-1-1-0*]; and

(2) The condition identified in subsection (b) of section 22-42 of the Zoning Resolution does exist in Community District 7/Manhattan, in that there is a scarcity of land in this District for general community purposes [*Vote of Combined Committee Members: 15-6-5-0; Vote of Non-Committee Board Members: 4-0-1-0*]; and

(3) To the best of CB7's knowledge and understanding, the condition identified in subsection (c) of section 22-42 of the Zoning Resolution does not currently exist in Community District 7/Manhattan [*Vote of Combined Committee Members: 25-0-1-0; Vote of Non-Committee Board Members: 4-0-1-0*]; and

(4) Therefore a special permit under section 74-90 of the Zoning Resolution is required in connection with this application and project.