



## CITY PLANNING COMMISSION

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August 21, 2013, Calendar No. 7

C 110154ZSX

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**IN THE MATTER OF** an application submitted by Liska NY, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-902 of the Zoning Resolution to modify the requirements of Section 24-111 (Maximum floor area ratio for certain community facility uses) to permit the allowable community facility floor area ratio of Section 24-11 (Maximum Floor Area Ratio and Percentage of Lot Coverage) to apply to an 8-story non-profit institution with sleeping accommodations (UG 3), on property located at 731 Southern Boulevard (Block 2720, Lot 28), in an R7-1 District, Borough of the Bronx, Community District 2.

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This application for a Special Permit was filed by Liska NY, Inc. on November 24, 2010, to facilitate the legalization of a non-profit institution with sleeping accommodations, in Bronx Community District 2.

### **BACKGROUND**

Liska NY, Inc. is seeking the grant of a special permit pursuant to Section 74-902 of the Zoning Resolution to modify the requirements of Section 24-111, which state that the Floor Area Ratio (FAR) of zoning lots containing non-profit institution with sleeping accommodations in R7-1 Districts may not exceed 3.44. The Special Permit would facilitate the legalization of an existing non-profit institution with sleeping accommodations which exceeds 3.44 FAR.

The subject building is located in the Longwood section of the Bronx on the north side of Southern Boulevard between Legget Avenue and E. 156<sup>th</sup> Street. It is situated on a lot with an area of 5,500 square feet. The building has a total floor area of 26,950 square feet and Floor Area Ratio (F.A.R.) of 4.9. The eight-story building contains 57 studio units and 370 square feet of space used as an office for a social service provider, New Hope Transitional Housing, a non-profit organization. New Hope Transitional Housing operates a non-contract homeless services facility in the building that receives referrals from the New York City Department of Homeless Services. The building was constructed in 2009 and has been operating under a temporary certificate of occupancy. The rear of the lot contains 962 square feet of open space.

The subject building adjoins six-story multi-family residential buildings on either side. The remaining blockfront is comprised of a six-story residential building at the corner of Southern Boulevard and Legget Avenue, a row of three-story townhouses and a community facility building containing a soup kitchen and mental health facility. Fox Playground wraps around the block along Southern Boulevard, E 156<sup>th</sup> Street and Fox Street. The rear yard of the subject building faces the playground.

The area north of Southern Boulevard is mostly residential with a mix of two story townhouses and six-seven story multi-family apartment buildings. Local retail uses including convenience stores, discount stores and local restaurants are located at the intersection of major streets. Prospect Avenue and Southern Boulevard are the two main thoroughfares in the vicinity of the project site. The area to the south of Southern Boulevard is zoned C8-3 and is occupied by one- and two-story commercial buildings including auto-repair shops, car washes, laundromats and vehicle storage facilities.

The zoning on the subject property is R7-1. The R7-1 district allows a residential F.A.R. of 3.44 and a community facility F.A.R. of 4.8 as-of-right. A non-profit institution with sleeping accommodations is allowed 3.44 F.A.R. as-of-right and 4.8 F.A.R. by Special Permit pursuant to 74-902.

The subject building exceeds the maximum F.A.R. of 3.44 which is permitted as-of-right for a non-profit institution with sleeping accommodations per ZR Section 24-111 in the R7-1 zoning district. The building also exceeds the height and setback regulations set forth in ZR Section 24-522(a). As per the height and setback regulations for the R7-1 district, a building must set back 15-feet on a wide street at 60feet or 6 stories whichever is less. The subject building is built up to eight stories and is 77 feet 4 inches in height with two setbacks. The building sets back about 5-feet at the 6th floor at a height of 58 feet 8 inches and sets back 10 feet at the seventh floor at a height of 68 feet.

The applicant proposes to demolish a portion of the seventh floor to bring the building into compliance with the 4.8 F.A.R. allowed by Special Permit to eligible community facility uses pursuant to ZR Section 74-902. The demolition will also bring the building in compliance with the height and setback regulations. The seventh floor will be altered to provide a 15 feet setback after the sixth floor at the street wall height of 58 feet 8 inches matching the setback at the eighth floor. This would reduce the number of units on the seventh floor from 8 to 6 and reduce the floor area of the building by 745 square feet. The floor area of the building after the alteration will be 26,208 square feet with an F.A.R of approximately 4.76. The altered building will contain 55 studio units. The applicant has also proposed improvements to the façade including additional lighting, addition of decorative elements and planting of required street trees to enhance the pedestrian experience.

### **ENVIRONMENTAL REVIEW**

This application (C 110154ZSX) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 11DCP055X. The lead is the City Planning Commission. After a study of the potential impacts of the proposed action, a Negative Declaration was issued on March 18, 2013.

### **UNIFORM LAND USE REVIEW**

This application (C 110154ZSX) was certified as complete by the Department of City Planning on March 18, 2013, and was duly referred to Community Board 2 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02 (b).

### **Community Board Public Hearing**

Community Board 2 held a public hearing on this application (C 110154ZSX) on May 22, 2013 and, on that day, by a vote of 17 in favor, 3 against, and 8 abstentions, adopted a resolution recommending disapproval of this application.

### **Borough President Recommendation**

This application (C 110154ZSX) was considered by the Borough President, who issued a recommendation disapproving this application on June 19, 2013.

### **City Planning Commission Public Hearing**

On June 19, 2013, Cal. No. 2, the City Planning Commission scheduled July 10, 2013, for a public hearing on this application (C 110154ZSX). The hearing was duly held on July 10, 2013 (Calendar No. 31). There were two speakers in favor of the application and two in opposition.

The applicant's representative appeared in favor of the application and expressed his belief that the application satisfied the findings required for the Special Permit application as stated in ZR Section 74-902. He asserted that the building will harmoniously blend with the urban design of the surrounding area. He also stated that the building will not result in an additional burden on the social services in the neighborhood, pointing to the environmental review which considered the potential for impacts on community facilities and resulted in a negative declaration. He noted that there will be two on-site workers providing services to the residents, including job referral and guidance for education. With regards to traffic, the applicant's representative asserted that the population residing in this building does not own cars and the vehicle trips by the employees working at the site will not trigger a traffic impact. In response to questions from the Commission, the representative stated that the owner of the building is committed to making repairs to the building and that work to improve the rear façade of the building is already underway.

The owner and developer of the property also appeared in favor of the application. He stated that the overbuilt condition of the property occurred as a result of an error by the architect who submitted the application to the Department of Buildings. He also stated that the plan for the project was approved as submitted due to an oversight by the Department of Buildings. He asserted that the operator of the non-profit organization is in good standing with the Department of Homeless Services.

The District Manager of Bronx Community Board 2 spoke in opposition of the application. He stated that the applicant had been uncooperative with the Community Board at the time when the project was first planned and through the Community Board's review of the Special Permit application. He also stated that during a tour of the facility in April 2013, he had observed lapses in the maintenance of the building, such as leaks in the ceiling and apartment door frames detached from the walls. He also stated that, during the land use committee meeting of the Community Board, another member of the Community Board cited building maintenance issues and the presence of rodents.

A representative from the office of Bronx Borough President spoke in opposition to the application. He cited the owner's errors in filing the application with the Department of Buildings and for overbuilding the property. The Bronx Borough President's representative also noted issues related to maintenance of the building.

## **CONSIDERATION**

The Commission believes that the grant of this Special Permit, is appropriate.

The Commission acknowledges that the proposed building would comply with 4.8 F.A.R. allowed by the special permit. The Commission also believes that the building, as altered, would be compatible with the adjacent buildings and will not obstruct the light and air of adjacent buildings. Although the subject building will have a total height of 77 feet, the building would set back 15 feet at a height of approximately 59feet, comparable to the height of adjoining buildings which are 63 feet and 64 feet in height.

The Commission is pleased that the applicant intends to improve the façade of the building with elements which will facilitate the integration of the building with those that exist on either side. Proposed improvements include addition of cornices to provide a visual continuity with the adjacent buildings, addition of a fence at the sixth floor roof, additional window sill treatment and a stone finish at the ground floor portion of the building façade.

The Commission notes that the environmental review of the project found no adverse impact on neighborhood social services resulting from the Special Permit. The increment in dwelling units resulting from the Special Permit action did not trigger detailed analysis of community facilities such as public schools, publicly funded day care centers, libraries, fire and police. Therefore the facility is not expected to require significant additions to supporting services of the neighborhood. The Commission notes that these neighborhood services are distinct from the specialized on-site services provided to the residents of the building by the non-profit provider.

The Commission notes that the streets providing access to the proposal are adequate to handle traffic generated by the facility and as shown in the Environmental Assessment Statement prepared for the application. The Commission also notes that the facility is adequately served by three (3) transit stops on #2/5 and #6 train lines and two (2) bus stops in close vicinity of the subject property.

The Commission acknowledges the importance of providing emergency shelter for those in need. In a letter dated July 25, 2013, the Department of Homeless Services (DHS) advised that the agency is legally mandated to provide temporary emergency shelter to any person or family that seeks it. The letter also cited the unprecedented demand for shelter for families and increased length of shelter stay in the last two years. DHS stated that the daily census of families using the DHS shelter system has gone up by 14 percent between June 2011 and June 2013 and that the length of stay has increased by 34 percent in the same time period. The Commission recognizes the importance of maintaining the ability of the Department of Homeless Services to provide shelter to homeless families, and that the grant of this special permit would permit the facility to continue in operation.

The Commission notes that the Community Board and the Borough President's representatives raised concerns about the poor maintenance of the building during the public review process. The Commission understands that the Department of Buildings conducted a building inspection on July 22, 2013 and issued violations to the property owner. The Commission acknowledges that in a letter dated August 1, 2013 the applicant's representative stated that work has already

begun to address the violations.. The Department of Buildings during their inspection identified one hazardous condition on the site, which was the separation of the bottom of the chain link fence from the roof. The chain link fence has been repaired as per information received by the Department from the applicant on August 13, 2013. The applicant's letter dated August 1, 2013 also stated that the DHS Routine Site Review Inspection (RSRI) conducted in April 2013 reflected an overall score of 77, which is considered 'very good' by DHS standards.

The Commission further acknowledges the concerns raised by the Community Board and the Borough President that the grant of a special permit could send a signal that zoning requirements can be ignored and violations simply legalized after the fact. However, the Commission is not a judicial body or trier of fact, and in deciding whether to grant a special permit, makes no determinations regarding responsibility for the conditions that require legalization. Rather, the Commission's role in reviewing a Special Permit is to determine whether the applicable findings are met. The Commission is frequently presented with applications which seek to legalize conditions that do not comply with the zoning resolution. In acting on such applications, the Commission does not express a view regarding the appropriateness of prior conduct, and encourages enforcement agencies to take such action as is warranted.

## **FINDINGS**

The Commission hereby makes the following findings pursuant to Section 74-902 of the Zoning Resolution:

- (a) that the distribution of #bulk# on the #zoning lot# will not unduly obstruct the access of light and air to adjoining properties or public #streets#, and will result in satisfactory site planning and satisfactory urban design relationships of #buildings# to adjacent #streets# and the surrounding area;
- (b) that the proposed facility will not require any significant additions to the supporting services of the neighborhood or that provision for adequate supporting services has been made; and

(c) that the #streets# providing access to such #use# will be adequate to handle the traffic generated thereby or provision has been made to handle such traffic.

**RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by Liska NY, Inc. for the grant of a special permit pursuant to Section 74-902 of the Zoning Resolution to modify the requirements of Section 24-111 (Maximum floor area ratio for certain community facility uses) to permit the allowable community facility floor area ratio of Section 24-11 (Maximum Floor Area Ratio and Percentage of Lot Coverage) to apply to an 8-story non-profit institution with sleeping accommodations (UG 3), on property located at 731 Southern Boulevard (Block 2720, Lot 28), in an R7-1 District, Borough of the Bronx, Community District 2, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 110154 ZSX) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by NSC Architecture, PC, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-1	Zoning Data	7.13.11
A-2	Proposed Site Plan	11.07.11
A-9	Proposed Section “A”	11.07.11

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except

for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.

4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.

5. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

6. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 110154 ZSX), duly adopted by the City Planning Commission on August 21, 2013 (Calendar No. 7), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair**  
**ANGELA M. BATTAGLIA, RAYANN BESSER,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN,**  
**MARIA M. DEL TORO, JOSEPH DOUEK, RICHARD W. EADDY, Commissioners**

**IRWIN G. CANTOR, P.E., MICHELLE DE LA UZ, ORLANDO MARIN, Commissioners, Voted No**

**ANNA HAYES LEVIN, Commissioner, Abstained**





**BRONX BOROUGH PRESIDENT'S RECOMMENDATION**  
**ULURP APPLICATION NO: C 110154 ZSX**  
731 Southern Boulevard

**DOCKET DESCRIPTION**

**CD 2-ULURP APPLICATION NO: C 110154 ZSX: IN THE MATTER OF** an application submitted by Liska NY, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-902 of the Zoning Resolution to modify the requirements of Section 24-111 (Maximum Floor Area Ratio and Percentage of Lot Coverage) to apply to an eight-story non-profit institution with sleeping accommodations (UG3), on property located at 731 Southern Boulevard (Block 2720, Lot 28), in an R7-1 District, Borough of the Bronx, Community District #2.

**BACKGROUND**

The purpose of this application is to legalize a building that is currently over the allowable 3.44 FAR for structures built in a R7-1 district under Use Group 3, and the maximum 4.80 FAR for a community facility. The current structure is a 26,950 square-foot, eight-story, 57-unit homeless shelter for single mothers with children with a FAR of 4.90. The proposed action requests a special permit that would allow the building to exist according to the 4.80 community facility FAR. The owner proposes to reduce the building by 745 square feet to a 4.76 FAR. The resulting action would reduce the unit count by two to 55 studio units. The owner originally applied for a building permit to construct a residential apartment building under Use Group 2.

The site itself, located 731 Southern Boulevard on Block 2720, Lot 28, is a 5,500 square-foot lot, with a width of 25 feet and depth of 110 feet. The immediate surrounding area is characterized by two six-story apartment buildings on either side of the shelter. Immediately to the north are multi-family apartment buildings. Immediately to the east, across the street, is a C8-3 district containing automobile and parking facilities. Immediately to the south is a one-story laundromat. Immediately to the west is Fox Playground.

The site contains on-site social services, managed by New Hope Transitional Housing, employs two social workers managing programs and making referrals for external substance abuse, mental health, educational and therapy programs.

**ENVIRONMENTAL REVIEW AND ULURP CERTIFICATION**

This application was reviewed pursuant to CEQR and SEQR and received a Negative Declaration as an unlisted action. The City Planning Commission certified this application as complete on March 18, 2013.

#### COMMUNITY BOARD PUBLIC HEARING

Bronx Community Board #2 held a public hearing on this application on May 22, 2013. A vote recommending disapproval of this application had 17 voted against the special permit, three in favor of the special permit, and eight abstentions.

#### BRONX BOROUGH PRESIDENT'S PUBLIC HEARING

The Bronx Borough President held a public hearing on this application on June 11, 2013. Representatives of the applicants were present and spoke in favor of this application. Bronx Community Board #2 District Manager Rafael Salamanca was present and expressed his concerns about the history of the building and its future use on behalf of the board. Bronx Department of Buildings (DOB) Commissioner Werner DeFoe and staff were present to discuss the filing history of the building, including violations and missteps on behalf of the owner and the agency. A representative from the Department of City Planning was also in attendance.

#### BRONX BOROUGH PRESIDENT'S RECOMMENDATION

This building has had a long controversial history. On August 19, 2003 this office originally issued a house number for a 32-unit apartment building, which is classified under Use Group 2 of the Zoning Resolution. In August 2007, the owner filed with DOB to change the building to a 57-unit project with "Sleeping Accommodations for the Homeless," but neglected to make the change from Use Group 2 to Use Group 3. In 2009, a Temporary Certificate of Occupancy (TCO) was mistakenly issued for the building under Use Group 2, and it began to operate as a homeless shelter. Later in 2009, following a series of complaints, it was discovered that not only was the TCO issued in error for the wrong Use Group, but that the building had been severely overbuilt. The Borough Commissioner decided to pursue carefully resolution of the egregious error as the building now housed a number of homeless single mothers with children.

The culmination of these series of missteps could be simply categorized as lack of oversight and ineptitude, but DOB discovered almost the same exact situation occurring at 1073 Hall Place by the owner, where the building was filed under Use Group 2 and the proceeded to operate as a shelter under the auspices of New Hope. In this case, DOB caught the error and are working toward a resolution. This building has not had a TCO since 2008.

It is clear to me that the owner, and possibly the operator, was fully aware of the actions taking place and gambled that he would be able to overbuild, profit from switching to a shelter and then rectify the situation if the rusc was made public. This ULURP represents an attempt by the applicant to rectify the situation. When asked why they did not go to the Board of Standards and Appeals for a variance, the owner's attorney explained that