



Issuance #50

DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES

60 HUDSON STREET, NEW YORK, N. Y. 10013

CHARLES M. SMITH, Jr., R.A., *Commissioner*

CHARLES R. FOY, Esq.  
General Counsel

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Operational  
Policy and Procedure Notice #17/87

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Date of Issuance: October 14, 1987

To: Borough Superintendents and Executive Staff

From: Charles R. Foy, General Counsel

Subject: Owner's Authorization --  
Condominiums and Cooperatives

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A recent application to the Board of Standards and Appeals raised the issue of under what circumstances a condominium unit owner is authorized to file applications with this Department.

Because the circumstances raised in that application (a copy of the B.S.A. resolution is annexed) may reoccur, the following procedures are to be followed:

1. A condominium unit owner or a cooperative shareholder may file an application for approval or issuance of a permit pursuant to Sections 27-142 and 27-151 of the Building Code. Where an application indicates that a condominium unit owner or a cooperative shareholder is the applicant, the application must include a statement by the applicant that the condominium board of managers or the cooperative board of directors has authorized the filing of the application.

2. If the condominium board of managers or cooperative board of directors of a premises notifies the Department in writing that it did not authorize the filing of the application, the processing of the application shall immediately cease and the condominium unit owner or cooperative shareholder be notified of the action. If any approval or permit had been issued, such approval or permit shall be revoked. The above steps shall be taken regardless of the status of the application or the work.

3. No condominium unit owner or cooperative shareholder may file in the capacity as a condominium unit owner or cooperative shareholder for a certificate of occupancy or temporary certificate of occupancy. A condominium unit owner or cooperative shareholder may file such application when he or she is acting on behalf of the condominium board of managers or the cooperative board of directors.

4. The Department's "Owner's Authorization" Directive dated May 8, 1984 which concerns net lessees remains in effect.

# MINUTES

1048-86-A

**APPLICANT**—Brown and Wood, for 35 East 38th Street Associates, owner.

**SUBJECT**—Application, November 26, 1986—appeal from a decision of the Department of Buildings which refused to reinstate a Building Notice permit revoked on the basis that the owner of the property has not authorized the work.

**PREMISES AFFECTED**—35 East 38th Street, north side, 80 feet west of Park Avenue, Block 868, Lot 32, Borough of Manhattan.

**APPEARANCES**—

For Applicant: Robert S. Cook, Jr.

For Administration: Jon Bosse, Department of Buildings

**ACTION OF BOARD**—Appeal denied.

**THE VOTE TO GRANT**—

Affirmative: Chairman Bennett, Commissioner Irrera,

Commissioner Lawrie and Commissioner O'Keefe . . . . 4

Negative: . . . . . 0

Not Voting: Commissioner Tamm . . . . . 1

Absent: Vice-Chairperson Bockman . . . . . 1

WHEREAS, the decision of the Department of Buildings as expressed by the General Counsel in a letter to the applicant dated November 25, 1986, acting on B.N. 1802/1986 states:

"Please be advised that I have found the Manhattan Borough Superintendent's revocation of June 30, 1986 to be correct and appropriate and consistent with this Department's policies and practice in dealing with controverted claims of an owner's authorization. This policy and practice provides that if a fee owner of premises or a party that claims total fee ownership of the premises denies authorization to file applications and do certain proposed work, then this Department will either not grant a permit or revoke any permit that has been granted. This action does not in any way, shape or form constitute a determination by this Department as to whether authorization has been properly or improperly denied, or of any other rights or obligations that the parties may have pursuant to leases or contractual arrangements. Certainly, in this case we make no finding as to the applicability of the condominium by laws or any other private agreement to the issue of ownership authorization.

and

WHEREAS, pursuant to Administrative Code §27-142 an applicant for a building permit must have proper authorization to file such application; and

WHEREAS, pursuant to Administrative Code §27-151, said applicant must attest to the Department of Buildings that the applicant is the "owner" of the premises or authorized by the owner to file such application; and

WHEREAS, Administrative Code §27-252 defines "owner" as the person having legal title to the premises; a mortgagee or vendee in possession; a trustee in bankruptcy; a receiver or any other person having legal ownership or control of the premises; and

WHEREAS, the premises located at 35 East 38th Street consists of an apartment and garage condominium development managed by a Board of Managers; and

WHEREAS, the building permit application at issue in this appeal reveals that the condominium unit owner of the garage represented therein that it is the owner of the building and, further, that the architect filing the application, represented to the Department of Buildings that he was authorized by the owner of the premises to file the application for the work specified therein and, based thereon, the permit was issued; and

WHEREAS, following issuance of the permit the Department of Buildings received notice of a dispute between the Board of Managers and the individual condominium garage owner applicant as to whether it had proper authorization to file the permit application; and

WHEREAS, the alteration filed for involves the removal of a concrete wall in order to create a new opening and a new ramp in the building; and

WHEREAS, recognizing this dispute and cognizant of the challenge by the condominium Board of Managers, the Department of Buildings revoked the permit; and

WHEREAS, all parties in this proceeding agree that a judicial determination of the respective rights of the Board of Managers and the individual condominium unit owner under the condominium by laws is required; and

WHEREAS, the Board has previously ruled and been sustained by the courts, that the Department of Buildings may properly revoke a building permit when there is a dispute over the right to execute alteration work and that the Department should defer to the courts for an adjudication of the rights of the respective parties; and

WHEREAS, while the definition of an owner under §27-232 does not precisely fit the circumstances of a condominium, where a party with legal title to a condominium unit, may still require the consent of the condominium Board of Managers to perform certain work; the Department properly concluded that a dispute existed between the condominium Board of Managers and the unit owner warranting the revocation of the permit until there is a judicial determination of each parties' rights.

Therefore, Be It Resolved, that the determination of the Department of Buildings as expressed by the General Counsel in a letter dated November 25, 1986, acting on B.N. Application #1802/1986 is hereby affirmed and the appeal is denied.

Adopted by the Board of Standards and Appeals, September 22, 1987.