

**NOTIFICATION OF LOCAL ACTION
DECISION OF THE CITY OF ALBANY BOARD OF ZONING APPEALS**

ADDRESS OF SUBJECT PROPERTY: **453 AKA 445 Madison Ave.**

IN THE MATTER OF: **Conditional Review of a Use Variance and Special Use Permit allowing an addition to a nonconforming tavern with live entertainment and hours of operation until 4AM.**

APPLICANT: **The Lark Tavern**

ADDRESS: **453 Madison Ave., Albany, NY 12210**

CASE NUMBER: **8-11, 2057**

DATE OF ORIGINAL APPROVAL: **9/14/11**

DATE OF REVIEW: **3/28/12**

DATE OF DECISION: **4/25/12**

WARD: **6**

DECISION: **Revoked / Denied; Approved w/Conditions**

N.A.: **Hudson Park**

HISTORIC/ SPECIAL DISTRICT(S): **Center Square/Hudson Park Historic District; Lark Street Business Improvement District**

The Use Variance is **Denied / Revoked**, by the following vote:

| | | |
|------------|--------------|----------------|
| For: 4 | Apostol: NIA | Ray: Y |
| Against: 0 | Cronin: NIA | Tucker-Ross: Y |
| Abstain: 0 | Moran: Y | Viele: Y |

The Special Use Permit is **Approved w/Conditions**, by the following vote:

| | | |
|------------|--------------|----------------|
| For: 4 | Apostol: NIA | Ray: Y |
| Against: 0 | Cronin: NIA | Tucker-Ross: Y |
| Abstain: 0 | Moran: Y | Viele: Y |

Site Description

The property in question is located on the north side of Madison Avenue in a C-1 Neighborhood Commercial zoning district, the Center Square/Hudson Park Historic District and the Lark Street Business Improvement District. The 69' x 193' lot is improved with a two-story, 4,224 square foot mixed-use commercial/residential structure, a single-story, 1,380 square foot commercial structure and an accessory parking area.

Relevant Considerations

The Board approved a Special Use Permit allowing for a 700 +/- square foot addition to a nonconforming tavern with live entertainment (nightclub) and hours of operation until 4AM at the subject address on September 14, 2011. The relevant considerations of the review of that case were as follows:

The applicant is proposing a 700 +/- square foot physical addition to a tavern with live entertainment. Per the City Zoning Ordinance, the use is classified as follows:

NIGHTCLUB -- An establishment where alcoholic beverages may be sold and consumed on the premises and where live entertainment and/or centrally controlled recorded performances take place and which may contain a stage, staging area and/or dance floor.

The use of the property as a nightclub is not a permitted use in the applicable C-1 zoning district,

but is a legal nonconforming use, as it predates the May 21, 1968 zoning ordinance. The hours of operation also exceed the permissions for the applicable district (6AM – 11PM; established October 15, 1993). The applicant indicates that the building dates to the 1860's and it has been utilized as a tavern since 1933, providing live entertainment for much of that time. A fire on May 6, 2010 extensively damaged the structure. Accordingly, the proposed rehabilitation and expansion of the nonconforming use is subject to the following provisions of the Zoning Ordinance:

§ 375-90 Discontinuance of a nonconforming use.

C. Damage or destruction.

(2) Where any such structure is damaged or destroyed to the extent of 50% or less of the cost of replacement of the structure new, repair or restoration of such structure may be made; provided that no repairs or restorations shall be made which would create or increase any parking, yard or space and bulk nonconformity, nor shall any repairs or restoration (except in conformity with the applicable zoning district regulations) be made unless a building permit is obtained and restoration is actually begun within one year after the date of such partial damage or destruction and is diligently pursued to completion.

F. Enlargement of structure. No structure devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner which would enlarge the nonconforming portion. No such enlargement shall create any new parking, yard or bulk nonconforming use.

The applicant states that the proposed addition is solely related to the code requirements for bathroom size and kitchen equipment that were triggered due to the needed rehabilitation of the building:

“With the old structure, the bathrooms were too small. There was no way to properly vent the kitchen and any ansul piping for venting would be and environmental and visual eyesore. The new larger bathrooms that were designed to code now occupy 300 square feet, a loss of 200 square feet compared to the old floor plans. The new kitchen adds back approximately 450 square feet to offset the loss of area due to the baths.”

The applicant elaborates further:

“The negative economic impact of not having this new kitchen and entrance area would be significant. The additional bathrooms and loss of area due to new codes shrunk the useful area of the tavern by 300-400 square feet. This rendered the old floor plan impractical and non-functional to a tenant desiring to provide any cooked / prepared food.”

The applicant contends that the proposed improvements will enhance overall safety at the establishment. Notably, a new means of ingress and egress will be provided at the rear of the structure for use by the business as well as the residential occupants. It is further noted that there will be no negative impact upon the historic building character or streetscape that will result, as the addition will be in the rear of the structure and not visible from the street.

The applicant states that the cost to rehabilitate the structure and to construct the addition will be in excess of \$900,000. He indicates that insurance claims relating to the fire total approximately \$225,000 and notes that it will take several years to break even on the investment. The applicant includes financial statements with the application that anticipate a rate of return of approximately 5.4%.

The Board conditionally approved the application with the following condition:

- *The applicant shall appear before the Board in six (6) months time for a review and evaluation of the proposed use and its operations*

Findings

Use Variance

Effective April 23, 2012, Ordinance 9.10.12 sets forth new rules and guidelines for the regulation of live entertainment via the issuance of Cabaret Licenses as proscribed in the Code of the City of Albany, Part II, Chapter 111, Section 2, Part 3, Article VIII. The Board finds that the Special Use Permit being reviewed is thereby usurped by such effective ordinance and is no longer necessary. As such, the Special Use Permit under review in this application is hereby revoked and the applicant is directed to apply for a Cabaret License by making an application as directed in §111-69.

Special Use Permit

There have been no noted adverse impacts of the approved Special Use Permit and the use is thereby renewed for a period of one year pending further review.

The Board finds that the special use is in accordance with the following standards set forth in §375-27(B)(1):

- a. Is as a permitted special use in the appropriate zoning district., as determined by the administrator.
- b. Will conform to the standards and conditions specified in §375 for that use.
- c. Will not have an undue adverse affect upon adjacent property, the character of the neighborhood and surrounding areas, traffic conditions, parking, utility facilities or other matters affecting the public health, safety, welfare or convenience.
- d. Operations in connection with the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, illumination, etc., than the operations of any permitted use not requiring a special use permit.
- e. Will be served adequately by essential public facilities and services such as highways, streets, parking spaces, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such additional services as the board deems appropriate.
- f. Complies with all additional requirements imposed on it by the provisions of §375.
- g. Will be in harmony with the applicable zoning district and will not adversely affect the neighborhood and the surrounding areas.

CONDITIONS

- **The applicant shall return to the Board in one (1) year for a review and evaluation of the approved hours of operation.**

I, G. Michael Apostol, representing the Board of Zoning Appeals of the City of Albany, hereby certify that the foregoing is a true copy of a decision of the Board made at a meeting thereof duly called and held on **April 25, 2012.**

Signed:  Date: 4/25/12

**NOTIFICATION OF LOCAL ACTION
DECISION OF THE CITY OF ALBANY BOARD OF ZONING APPEALS**

► **Important Note:** This is not a building permit. All building permits must be approved and issued by the Division of Building & Codes prior to the start of any construction.

ADDRESS OF SUBJECT PROPERTY: **453 Madison Ave.**

IN THE MATTER OF: **Use Variance and Special Use Permit to allow for a 700 +/- square foot addition to a nonconforming tavern with live entertainment (nightclub) and hours of operation until 4AM d/b/a Flo's Lark Tavern.**

APPLICANT: **Michael F. DiNapoli**

ADDRESS: **57 Middlesex Dr., Slingerland, NY 12159**

CASE NUMBER: **#8-11, 2057**

DATE APPLICATION RECEIVED: **7/19/11**

DATE OF HEARING: **8/10/11**

DATE OF DECISION: **9/14/11**

WARD: **6**

DECISION: **Approved w/Conditions**

N.A.: **Hudson Park**

HISTORIC/ SPECIAL DISTRICT(S): **Center Square / Hudson Park Historic District; C-1 Design District; Lark Street Business Improvement District**

The request is **Approved**, by the following vote:

| | | |
|------------|------------|----------------|
| For: 5 | Apostol: Y | Ray: Y |
| Against: 1 | Cronin: Y | Tucker-Ross: Y |
| Abstain: 0 | Moran: N | Viele: Y |

Site Description

The property in question is located on the north side of Madison Avenue between Lark and Willett Streets in a C-1 Neighborhood Commercial zoning district, the Center Square / Hudson Park Historic District and the Lark Street Business Improvement District. The 0.53-acre lot is improved with two commercial structures, 4,224 and 1,380 square feet in size, and a +/- 36-space accessory parking area.

Relevant Considerations

The applicant is proposing a 700 +/- square foot physical addition to a tavern with live entertainment. Per the City Zoning Ordinance, the use is classified as follows:

NIGHTCLUB -- An establishment where alcoholic beverages may be sold and consumed on the premises and where live entertainment and/or centrally controlled recorded performances take place and which may contain a stage, staging area and/or dance floor.

The use of the property as a nightclub is not a permitted use in the applicable C-1 zoning district, but is a legal nonconforming use, as it predates the May 21, 1968 zoning ordinance. The hours of operation also exceed the permissions for the applicable district (6AM – 11PM; established October 15, 1993). The applicant indicates that the building dates to the 1860's and it has been utilized as a tavern since 1933, providing live entertainment for much of that time. A fire on May 6, 2010 extensively damaged the structure. Accordingly, the proposed rehabilitation and expansion of the nonconforming use is subject to the following provisions of the Zoning Ordinance:

§ 375-90 *Discontinuance of a nonconforming use.*

C. *Damage or destruction.*

(2) Where any such structure is damaged or destroyed to the extent of 50% or less of the cost of replacement of the structure new, repair or restoration of such structure may be made; provided that no repairs or restorations shall be made which would create or increase any parking, yard or space and bulk nonconformity, nor shall any repairs or restoration (except in conformity with the applicable zoning district regulations) be made unless a building permit is obtained and restoration is actually begun within one year after the date of such partial damage or destruction and is diligently pursued to completion.

F. Enlargement of structure. No structure devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner which would enlarge the nonconforming portion. No such enlargement shall create any new parking, yard or bulk nonconforming use.

The applicant states that the proposed addition is solely related to the code requirements for bathroom size and kitchen equipment that were triggered due to the needed rehabilitation of the building:

“With the old structure, the bathrooms were too small. There was no way to properly vent the kitchen and any ansul piping for venting would be and environmental and visual eyesore. The new larger bathrooms that were designed to code now occupy 300 square feet, a loss of 200 square feet compared to the old floor plans. The new kitchen adds back approximately 450 square feet to offset the loss of area due to the baths.”

The applicant elaborates further:

“The negative economic impact of not having this new kitchen and entrance area would be significant. The additional bathrooms and loss of area due to new codes shrunk the useful area of the tavern by 300-400 square feet. This rendered the old floor plan impractical and non-functional to a tenant desiring to provide any cooked / prepared food.”

The applicant contends that the proposed improvements will enhance overall safety at the establishment. Notably, a new means of ingress and egress will be provided at the rear of the structure for use by the business as well as the residential occupants. It is further noted that there will be no negative impact upon the historic building character or streetscape that will result, as the addition will be in the rear of the structure and not visible from the street.

The applicant states that the cost to rehabilitate the structure and to construct the addition will be in excess of \$900,000. He indicates that insurance claims relating to the fire total approximately \$225,000 and notes that it will take several years to break even on the investment. The applicant includes financial statements with the application that anticipate a rate of return of approximately 5.4%.

Findings

The Board finds that, in accordance with §375-26(B)(2)(a), the variance granted is the minimum necessary, and that:

- a. The applicant has demonstrated an unnecessary hardship, in that they cannot realize a reasonable return with a permitted use of the building.
- b. This hardship is unique to this property.
- c. Granting the variance will not alter the essential character of the neighborhood.
- d. The hardship was not self-created.

Additionally, the Board finds that the special use is in accordance with the following standards set forth in §375-27(B)(1):

- a. Is as a permitted special use in the appropriate zoning district., as determined by the administrator.
- b. Will conform to the standards and conditions specified in §375 for that use.
- c. Will not have an undue adverse affect upon adjacent property, the character of the neighborhood and surrounding areas, traffic conditions, parking, utility facilities or other matters affecting the public health, safety, welfare or convenience.
- d. Operations in connection with the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, illumination, etc., than the operations of any permitted use not requiring a special use permit.
- e. Will be served adequately by essential public facilities and services such as highways, streets, parking spaces, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such additional services as the board deems appropriate.
- f. Complies with all additional requirements imposed on it by the provisions of §375.
- g. Will be in harmony with the applicable zoning district and will not adversely affect the neighborhood and the surrounding areas.

CONDITIONS

- **The applicant shall appear before the Board in six (6) months time for a review and evaluation of the proposed use and its operations**

The Board hereby issues a negative declaration under SEQR for this unlisted action, as the proposed construction will not result in any significant adverse environmental impacts.

I, G. Michael Apostol, representing the Board of Zoning Appeals of the City of Albany, hereby certify that the foregoing is a true copy of a decision of the Board made at a meeting thereof duly called and held on **September 14, 2011.**

Signed:  Date: 9/14/11

► **Important Note: Unless otherwise specified by the Board, this decision shall expire and become null and void if the applicant fails to obtain any necessary zoning, building, or other permits or comply with the conditions of such decision within six (6) months of the date of signature.**