

28-14-BZ

CEQR #14-BSA-114K

APPLICANT – Eric Palatnik, P.C. for McDonald Corporation, owner; Brooklyn Avenue U Enterprises Corporation, lessee.

SUBJECT – Application February 10, 2014 – Special Permit (§73-243) to permit the continued use and (Use Group 6) eating and drinking establishment with an accessory drive-through. C1-2/R4 zoning district.

PREMISES AFFECTED – 3540 Nostrand Avenue, westside of Nostrand Avenue, between Avenue V and Avenue W. Block 7386, Lot(s) 114 and 117. Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 13, 2014, acting on DOB Application No. 320454192, reads:

Eating or Drinking establishment with an accessory drive through facility is not permitted as of right in C1 District contrary to ZR 32-15; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within an R4 (C1-2) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on October 21, 2014, with continued hearings on January 27, 2015, and March 3, 2015, and then to decision on March 24, 2015; and

WHEREAS, Vice-Chair Hinkson, Commissioner Montanez and Commissioner Ottley-Brown performed inspections of the subject site and neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site located on the west side of Nostrand Avenue, between Avenue V and Avenue W, within an R4 (C1-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 200 feet of frontage along Nostrand Avenue, and approximately 21,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story eating and drinking establishment (Use Group 6, operated as a McDonald’s franchise) with 3,268 sq. ft. of floor area (0.16 FAR), an accessory drive-through, and 28 accessory parking spaces; and

WHEREAS, the existing accessory drive-through was added to the eating and drinking on pursuant to a special permit issued by the Board on March 13, 1988, under BSA Cal. No. 1217-88-BZ, the term of which was last extended on October 12, 1999 and which expired on March 13, 2005; and

WHEREAS, because the previously-issued special

permit is expired, the instant application seeks a new special permit, as per §1-07.3(b)(3)(iii) of the Board’s Rules of Practice and Procedure; and

WHEREAS, the Board notes that a special permit is required for the proposed accessory drive-through facility in the R4 (C1-2) zoning district, pursuant to ZR § 73-243; and

WHEREAS, under ZR § 73-243, the applicant must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the site reflects substantial orientation toward automobiles; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for ten automobiles; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site, and notes that the existing facility has been operating since 1990; and

WHEREAS, the applicant further represents that Nostrand Avenue is a wide street which has two lanes of traffic and a parking lane in both directions and that the west side of Nostrand Avenue, where the subject site is located, is characterized primarily by commercial uses; and

WHEREAS, in addition, the applicant submitted a zoning analysis reflecting that the facility complies with the accessory off-street parking regulations for the R4 (C1-2) zoning district; there are 28 spaces on the site, as required; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 400 feet of the site, which reflects substantial orientation toward automobiles and is predominantly commercial in nature; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the site; and

WHEREAS, the applicant states that the impact of the drive-through upon residences is minimal, in that (a) the sites to the north and south of the subject site are occupied with commercial uses; (b) Nostrand Avenue, which consists of four traffic lanes and two parking lines, is situated directly east of the subject site; and (c) there is a buffer fence to the west of site; and

WHEREAS, the applicant states that there will continue to be adequate buffering between the drive-through and adjacent uses in the form of a 6’-0” high chain link fence with safety top caps and 4’-0” high perennials; and

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WHEREAS, accordingly, the applicant represents that the drive-through facility satisfies each of the requirements for a special permit under ZR § 73-243; and

WHEREAS, at hearing, the Board raised concerns about the volume of the outdoor menu soundboard at the site, specifically, the volume of the menu board and its impact on neighboring residential uses; and

WHEREAS, in response the applicant explained that the menu soundboard utilizes a Panasonic 2 WX-CS460 outdoor speaker / microphone, which is fully adjustable between zero (0) decibels and sixty (60) decibels, and that the operator of the restaurant manually adjusts the volume to operate the sound board system in a manner that does not adversely impact neighboring residential uses; further, the applicant represents that the operator has agreed to reduce the volume of the soundboard at approximately 7:00 p.m., daily; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-114K dated February 7, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse

impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to permit, on a site within R4 (C1-2) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR §32-15; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "March 9, 2015"- (5) sheets; and *on further condition:*

THAT the term of this grant will expire on March 24, 2025;

THAT the operator of the restaurant shall remove or cause to be removed the trash from the site no fewer than six (6) times per week;

THAT the fencing at the subject site shall be well maintained and kept in good appearance;

THAT the operator of the restaurant shall cause extermination services to be performed at the site on a bi-monthly (twice a month) basis;

THAT the operator of the restaurant shall maintain the volume of its outdoor soundboard menu so as not to disturb residential neighbors;

THAT parking and queuing space for the drive-through will be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering will be maintained as indicated on the BSA-approved plans;

THAT the planting shown on the Board approved plans shall consist of perennials and shall be well maintained;

THAT all signage will conform to C1-2 zoning district regulations;

THAT the above conditions will appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, March 24, 2015.

A true copy of resolution adopted by the Board of Standards and Appeals, March 24, 2015.

Printed in Bulletin Nos. 13-14, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

