

172-79-BZ

APPLICANT – Alfonso Duarte, for Luciano Utopia LLC., owner.

SUBJECT – Application July 16, 2014 – Extension of Term of a previously approved variance permitting the operation of a Real Estate office and accessory parking which will expire on July 24, 2014. R2 zoning district.

PREMISES AFFECTED – 167-04 Northern Boulevard, southeast corner of 16th Street, Block 5398, Lot 11, Borough of Queens

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening, an extension of term for a variance permitting an office (Use Group 6) within an R2 zoning district, which expired on July 24, 2014, and an amendment to eliminate the condition requiring Board approval for any change in the owners or operator of the site; and

WHEREAS, a public hearing was held on this application on January 13, 2015, after due notice by publication in *The City Record*, with continued a hearing on March 24, 2015, and then to decision on May 19, 2015; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 7, Queens, recommends approval of the application, on condition that the grant retain the condition requiring Board approval for a change in operator or owner; and

WHEREAS, Assemblyman Edward Braunstein, Councilman Paul Vallone, and Queens Borough President Melinda Katz, and certain members of the surrounding community, including the Auburndale Improvement Association, recommend approval of the application, on condition that the grant retain the condition requiring Board approval for a change in operator or owner; and

WHEREAS, the subject site is located at the southeast corner of the intersection of Northern Boulevard and 167th Street, within an R2 zoning district; and

WHEREAS, the site, approximately 64 feet of frontage along Northern Boulevard, approximately 89 feet of frontage along 167th Street, and approximately 5,694 sq. ft. of lot area; and

WHEREAS, the site has is occupied by a one-story office building (Use Group 6) with approximately 1,300 sq. ft. of floor area (0.23 FAR) and six accessory parking spaces; and

WHEREAS, the Board has exercised jurisdiction

over the site since July 24, 1979, when, under the subject calendar number, it granted, pursuant to ZR § 72-21, an application to permit, on a site within an R2 zoning district, the enlargement of an existing one-story building to be operated as a real estate office (Use Group 6) with four accessory parking spaces, contrary to use regulations, for term of 10 years, to expire on July 24, 1989; and

WHEREAS, the grant included several conditions, including the following: “that this variance shall lapse with any change in ownership or control”; and

WHEREAS, the term of the grant was extended on April 18, 1990 (to expire on July 24, 1999) and again on July 13, 1999, for a term of 15 years, to expire on July 24, 2014; the 1999 grant included an amendment allowing the addition of two parking spaces, bringing the number of spaces at the site to its current six; and

WHEREAS, accordingly, the applicant now seeks an extension of the term of the variance; in addition, the applicant seeks an amendment removing the condition requiring Board approval for a change in the owner or operator of the site; and

WHEREAS, the Board notes that, initially, the applicant sought to increase the number of parking spaces at the site to seven; however, in response to the Board concern about the provision of a parking space for a person with certain physical disabilities, the applicant revised its proposal to provide only six parking spaces, including an ADA-compliant space; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, modify the conditions of a variance; and

WHEREAS, the applicant asserts that the condition requiring Board approval for a change in the owner or operator creates an unnecessary hardship for the owner, who cannot sell or lease the building without prior Board approval; further, the applicant contends that the condition has no land use regulation purpose that cannot be accomplished with a limitation on the permitted use; and

WHEREAS, the applicant also notes that changes from one professional office to another are permitted as-of-right under the Zoning Resolution; and

WHEREAS, at hearing, the Board directed the applicant to: (1) verify that the signage complies with the prior grant; (2) install and maintain landscaping at the rear of the site; and (3) replace the existing chain enclosure for the curb cut along 167th Street with a more robust enclosure; and

WHEREAS, in response, the applicant demonstrated that the signage was in compliance with the prior grant; in addition, the applicant revised its plans to include notes regarding the required landscaping and enclosure for 167th Street curb cut; and

WHEREAS, as to the removal of the condition regarding the identity of the owner/operator, the Board observes that while such a condition is necessary for a non-profit entity receiving a variance—because such

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grants are directly related to the non-profit's demonstrated programmatic needs—it is not necessary in this case, because the land use purpose of ensuring that the commercial use operates harmoniously within in the residence district can be accomplished with: (1) a term; and (2) a condition permitting professional office use only; and

WHEREAS, based on the foregoing, the Board has determined that the evidence in the record supports the findings required to be made for an extension of term under ZR §§ 72-01 and 72-22.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 24, 1979, so that as amended the resolution reads: “to permit an extension of the term of the variance for an additional ten years from the prior expiration, to expire on July 24, 2024 and to permit the elimination of the condition requiring Board approval for a change in the owner or operator of the site; *on condition on condition* that all work shall substantially conform to drawings, filed with this application marked ‘Received April 30, 2015’ –(4) sheets; and on further condition:

THAT the term of the variance shall expire on July 24, 2024;

THAT the use of the site shall be limited to professional offices (Use Group 6B);

THAT all site conditions, including parking, signage, and landscaping, shall comply with the BSA-approved plans;

THAT the site shall be maintained free of graffiti and debris;

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by May 19, 2016;

THAT DOB shall verify that the signage complies with the applicable regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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, May 19, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 19, 2015.
Printed in Bulletin No. 22, Vol. 100.**

**Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.**

