

**327-88-BZ**

APPLICANT – Eric Palatnik, P.C., for George Hui, owner.

SUBJECT – Application October 4, 2012 – Amendment to a previously granted variance (§72-21) to legalize the addition of a 2,317 square foot mezzanine in a UG 6 eating and drinking establishment (*Jade Asian Restaurant*). C4-3 zoning district.

PREMISES AFFECTED – 136-36 39th Avenue aka 136-29 & 136-35A Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 14, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance, which, pursuant to ZR § 72-21, authorized in a C4-2 zoning district the enlargement of existing retail stores and offices (Use Group 6) within a mixed residential and commercial building without the required number of accessory off-street parking spaces and loading berths, contrary to ZR §§ 36-21 and 36-62; and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in the *City Record*, with continued hearings on September 10, 2013, October 22, 2013, November 26, 2013, and January 14, 2014, and then to decision on February 11, 2014; and

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

WHEREAS, Community Board 7, Queens, recommends disapproval of this application, citing concerns about open Department of Buildings (“DOB”) violations and the applicant’s overall lack of cooperation; and

WHEREAS, the subject site is a rectangular through lot located on the block bounded by Main Street, Roosevelt Avenue, Union Street and 39th Avenue, within a C4-3 zoning district; and

WHEREAS, the site has 97.33 feet of frontage on Roosevelt Avenue, 97.33 feet of frontage on 39th Avenue, and approximately 17,130 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two- and three-story mixed residential and commercial building with 31,439.07 sq. ft. of floor area (1.88 FAR); and

WHEREAS, on October 21, 1991, under the subject calendar number, the Board granted a variance to

allow the enlargement of the building without the required number of accessory off-street parking spaces and loading berths; per ZR §§ 36-21 and 36-62, 52 parking spaces and one loading berth were required for the retail and office uses (Use Group 6) in the building; under the grant, no parking spaces or loading berths were required; and

WHEREAS, the applicant represents that subsequent to the grant and without the Board’s authorization, in 1996, a mezzanine was constructed between the second and third stories, increasing the floor area by 2,296 sq. ft. (from 29,143.07 sq. ft. (1.70 FAR) to 31,439.07 sq. ft. (1.88 FAR)) and increasing the required number of accessory parking spaces on the lot from 52 to 60; in connection with this enlargement, the use of the second story was converted from retail and offices to an eating and drinking establishment; and

WHEREAS, the applicant notes that the 1996 enlargement was completed under DOB permit Application No. 400627835, which referred to the space as a “greenhouse”; and

WHEREAS, the applicant now requests an amendment to legalize the enlargement by increasing the degree of the previously-granted parking waiver by eight spaces; and

WHEREAS, as noted above, the applicant states that the enlargement increased the number of required accessory parking spaces from 52 to 60; and

WHEREAS, the applicant states that, consistent with the basis of the prior grant, the history of development at the site, namely, the existing building’s full-lot coverage and limited cellar height, creates a practical difficulty in providing the required number of accessory parking spaces; and

WHEREAS, specifically, the applicant asserts that the only location on the site where parking could be provided as-of-right is in the cellar; however, creating parking in the cellar would require substantial demolition of existing retail space at the cellar and first story, temporary or permanent displacement of tenants, complex structural work, construction of ramps, and relocation of the sprinkler connection, water main, sewer connection, storm water connection, and electrical units, at significant cost; and

WHEREAS, the applicant notes that even with the additional 2,296 sq. ft. of floor area, the lot is significantly underdeveloped in that its 1.88 FAR is well below the maximum permitted FAR of 3.40; and

WHEREAS, the applicant states that the enlarged portion of the restaurant accommodates 72 persons, and that the second story accommodates 224 persons, for a total restaurant capacity of 296; and

WHEREAS, the applicant contends that the enlargement, while modest, is essential to the operations of the eating and drinking establishment, because it allows for semi-private dining, which makes it popular for community events and professional and/or corporate

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meetings; and

WHEREAS, the applicant also represents that the semi-private dining area is used primarily for events, except on weekends and on holidays, when the demand for seating increases substantially; and

WHEREAS, as such, the applicant states that the enlargement does not negatively impact the surrounding community; and

WHEREAS, the applicant states that the surrounding community is overwhelmingly commercial and includes, across 39th Avenue, a large, metered parking facility; and

WHEREAS, in addition, the applicant represents that parking is unnecessary for the majority of the restaurant's (and the site's) visitors and employees due to the abundance of nearby public transportation, including the No. 7 subway line and the 20 public bus routes within a one-block radius of the site; and

WHEREAS, further, the applicant provided a parking analysis study, which concludes that existing nearby parking is adequate to accommodate the anticipated increase in demand generated by the enlargement; and

WHEREAS, finally, the applicant notes that the restaurant is popular within the community and that the enlargement complies in all respects with the C4-3 bulk regulations; and

WHEREAS, at hearing, the Board questioned the compliance of the proposed signage, egress, seating layouts, and occupant loads; in addition, the Board directed the applicant to refine and further explain its parking analysis, and to submit photographs showing the removal of egress obstructions; and

WHEREAS, in response, the applicant submitted amended plans showing compliance with the C4-3 sign regulations, an additional means of egress in the restaurant, the proposed seating arrangements, and a detailed chart showing the permitted and proposed occupant loads of all floor space within the building; and

WHEREAS, in addition, the applicant submitted a revised parking study and a series of photographs showing the restaurant's clear and unobstructed egress; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

*Therefore it is Resolved*, that the Board of Standards and Appeals reopens and amends the

**A true copy of resolution adopted by the Board of Standards and Appeals, February 11, 2014.**

**Printed in Bulletin No. 7, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

resolution, dated October 21, 1991, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received January 28, 2014'-eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: a maximum of 31,439.07 sq. ft. of floor area (1.88 FAR);

THAT the occupant loads of the building will be in accordance with the BSA-approved plans;

THAT all signage will be in accordance with the C4-3 regulations;

THAT a certificate of occupancy will be obtained by February 11, 2015;

THAT all conditions from the prior grant will remain in effect, except as otherwise stated herein;

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

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; 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, February 11, 2014.

