

**\*CORRECTION**

**The resolution adopted on April 1, 2014, under Calendar No. 94-13-BZ and printed in Volume 99, Bulletin No. 14, is hereby corrected to read as follows:**

**94-13-BZ**

**CEQR #13-BSA-115Q**

APPLICANT – Vinod Tewari, for Peachy Enterprise, LLC, owner.

SUBJECT – Application March 25, 2013 – Special Permit (§73-19) to allow a school, contrary to use regulation (§42-00). M1-3 zoning district.

PREMISES AFFECTED – 11-11 40<sup>th</sup> Avenue aka 38-78 12<sup>th</sup> Street, Block 473, Lot 473, Borough of Queens.

**COMMUNITY BOARD #1Q**

**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, the decision of the Queens Borough Commissioner, dated February 28, 2013, acting on Department of Buildings Application No. 420812632, reads in pertinent part:

Daycare is classified under UG 3 by Department’s Memo July 6, 1976 [and therefore] is not permitted in M1-3 district as per ZR 42-00; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-3 zoning district, the conversion of the first story of an existing one-story and basement commercial building to a Use Group 3 daycare, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in the *City Record*, with continued hearings on September 10, 2013 and February 25, 2014, and then to decision on April 1, 2014; and

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

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of 40th Avenue and 12th Street, within an M1-3 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 548, 618, 619, and 621, has a lot area of approximately 16,139 sq. ft., 200 feet of frontage along 12th Street, and 74.34 feet of frontage along 40th Avenue; and

WHEREAS, the applicant represents that Lot 548 is currently occupied by a one-story and basement commercial building with 14,947 sq. ft. of floor area (0.93 FAR); Lots 618, 619, and 621 are currently a parking lot; and

WHEREAS, the applicant proposes to renovate the first story of the building to allow a Use Group 3 daycare (“the School”) with approximately 7,473 sq. ft. of floor area (0.46 FAR), and utilize Lots 618, 619, and 621 for accessory off-street parking and a play area; the applicant notes that the basement will not be altered under the subject application and will remain Use Group 6 (offices); and

WHEREAS, the applicant states that the renovated building will serve an estimated 117 children ranging in age from two to five years and approximately 25 employees, and provide related sanitary facilities and administrative offices; and

WHEREAS, the applicant states that the School will be in compliance with the New York Health Code on Child Care Services and will operate from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant states that the School requires a minimum of 7,500 sq. ft. in order to carry out its program (child care for 117 students) in accordance with the New York Health Code; and

WHEREAS, in addition, the applicant represents that its students are drawn from primarily within a half-mile radius of the site; and

WHEREAS, finally, the applicant notes that the owner will be directly involved in the management of the School, in order to minimize costs and to ensure ongoing compliance with the rules and regulations governing the operation of the School; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-3 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that it conducted a search of nearby residence and commercial districts with the following site criteria: (1) a minimum of 7,500 sq. ft. of program space in order to accommodate the School’s 117 students in accordance with the New York Health Code; (2) parking and recreation space; (3) minimal construction costs; (4) proximity to the neighborhood surrounding the site; and (5) proximity to public transportation; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of five buildings within the area and on sites where Use Group 3 is permitted as-of-right: 34-19 Tenth Street; 34-51 Vernon Boulevard; 30-01 Northern Boulevard; 65-35

**94-13-BZ**

**CEQR #13-BSA-115Q**

Queens Boulevard; and 45-02 Skillman Avenue; and

WHEREAS, the applicant represents that each building was unsuitable for the School, in that: 34-19 Tenth Avenue was not in close proximity to public transportation and its space was not suitable for children and would have required extensive renovations, including the installation of an elevator; 34-51 Vernon Boulevard had only 6,500 sq. ft. of usable space and no on-site parking area; 30-01 Northern Boulevard had only 5,000 sq. ft. of usable space, would have required extensive renovations, had neither on-site recreation space, nor a nearby park; 65-35 Queens Boulevard had less than the required amount of usable space and is already occupied by a child care center on the second story; and 45-02 Skillman Avenue had only 3,000 sq. ft. of usable space; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located approximately 200 feet from an R6 zoning district, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that an ambient noise survey was conducted at the site, which indicated that the predominant noise source in the area is vehicular traffic, which according to the survey conducted during peak, weekday travel periods, averaged 27 dB(A); and

WHEREAS, the applicant notes that 27 dB(A) is well below the 45 dB(A) that is considered acceptable according to the CEQR Technical Manual, and that such low noise level within the building is owing to the fact that it was built with sound-attenuating exterior wall and window construction; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's use will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-3 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are

met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that the majority of students will be dropped off by parents commuting on the subway (F train), which is located less than two blocks from the site; and

WHEREAS, as for vehicular traffic, the applicant states that, based on its assessment of existing traffic conditions in the vicinity, the School can operate safely without significant impacts; and

WHEREAS, in particular, the applicant states that students will enter and exit the building via an entrance on 12th Street, which the applicant notes is not a primary thoroughfare based on its study of traffic patterns; in addition, a four-way stop sign and pedestrian lanes have been installed at the intersection of 12th Street and 40th Avenue; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, the applicant represents that, to the extent deemed appropriate by DOT, it will install additional signage, "School Crossing" pavement markings, and crossing guards in the vicinity; and

WHEREAS, by letter dated April 8, 2013, DOT states that it has no objection to the proposed construction and will, upon approval of the application, prepare a safe route to school map with signs and marking; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, 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, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. No. 13BSA115Q, dated May 23, 2013; and

**94-13-BZ**

**CEQR #13-BSA-115Q**

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, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2013 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's March 2014 Air Quality Impact Assessment and determined that no significant air quality impacts to the proposed project are anticipated; 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, with conditions as stipulated below, 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 §§ 73-19 and 73-03 and grants a special permit, to allow the conversion of the first story of an existing one-story and basement commercial building to a Use Group 3 daycare, on a site within an M1-3 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 20, 2013" – (2) sheets and "May 24, 2013" – (4) sheets; and *on further condition*:

**A true copy of resolution adopted by the Board of Standards and Appeals, April 1, 2014.**

**Printed in Bulletin No. 14, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

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 DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT any change in the operator of the school requires review and approval by the Board;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70;

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, April 1, 2014.

**The resolution has been amended. Corrected in Bulletin Nos. 16-18, Vol. 99, dated May 8, 2014.**

