

### 130-13-BZ

APPLICANT – Rothkrug Rothdrug & Spector, for Venetian Management LLC, owner.

SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a variance which permitted a one-story motor vehicle storage garage with repair (UG 16B), which expired on February 14, 1981; Amendment (§11-413) to change the use to retail (UG 6); Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1590 Nostrand Avenue, southwest corner of Nostrand Avenue and Albemarle Road. Block 5131, Lot 1. Borough of Brooklyn.

### COMMUNITY BOARD #17BK

**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 Brooklyn Borough Commissioner, dated February 23, 2013, acting on Department of Buildings (“DOB”) Application No. 320698465, reads in pertinent part:

Proposed conversion to retail stores (UG 6) and alteration of existing one-story storage garage for more than five motor vehicles and motor vehicle repair shop limited to vehicles owned by tenant in an R6 zone previously approved by BSA under Cal. No. 863-50-BZ must be referred to BSA; and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement of a prior Board approval, and an amendment to allow a change in use from a public garage for vehicle storage and motor vehicle repair (Use Group 16) to retail stores (Use Group 6) and a warehouse (Use Group 16); and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in the *City Record*, with continued hearings on January 28, 2013, March 4, 2014 and April 1, 2014, and then to decision on April 29, 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, the subject site is an irregular through-lot located on the block bounded by Albemarle Road, Nostrand Avenue, East 29th Street, and Tilden Avenue, within an R6 zoning district; and

WHEREAS, the site has approximately 101 feet of frontage along Albemarle Road, approximately 271 feet of frontage along Nostrand Avenue, approximately 195 feet of frontage along East 29th Street, and 46,665 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story storage and repair garage (Use Group 16) with 31,613 sq. ft. of floor area (0.68 FAR); and

WHEREAS, on February 14, 1951, under BSA Cal. No. 863-50-BZ, the Board granted a variance to

permit, in a business use district, the extension of an existing public garage using more than the permitted area, to be used as a storage garage and motor vehicle repair shop for New York Telephone Company vehicles, for a term of 30 years, to expire on February 14, 1981; and

WHEREAS, on April 24, 1951, the grant was amended to permit relocation of accessory gasoline pumps; and

WHEREAS, the applicant notes that in 1971, New York Telephone Company acquired the lot on the northwest corner of Block 5131, demolished the residential buildings that occupied by the lot, and began using the lot for additional parking for the uses at the site; and

WHEREAS, the applicant now proposes to reinstate the variance granted under BSA Cal. No. 836-50-BZ to allow for the change of use to a series of Use Group 6 retail stores along Nostrand Avenue and a Use Group 16 warehouse along East 29th Street; in addition, the applicant proposes an accessory parking lot for 20 automobiles adjacent to the warehouse, an accessory parking lot for 15 automobiles at the corner of Albemarle Road and Nostrand Avenue, five accessory parking spaces within the warehouse (for employees), and new landscaping and street trees along the three frontages of the site; and

WHEREAS, as to the nearby lot incorporated into the site in 1971, it will be reapportioned as a separate tax lot and the site will be restored to the dimensions approved by the Board under the original grant; and

WHEREAS, pursuant to ZR § 11-411 and the Board’s Rules of Practice and Procedure, the Board may extend the term of a pre-1961 grant that has been expired for more than ten years, provided that: (1) the use of the premises has been continuous since the expiration of the term; (2) substantial prejudice would result from the refusal to allow the extension; and (3) the use permitted by the grant does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, the applicant submitted written testimony and supporting documentation indicating that New York Telephone Company and its successor, Verizon, occupied the site continuously from the expiration of the term of the grant on February 14, 1981 through 2012; and

WHEREAS, as to substantial prejudice, the applicant asserts that it is not feasible to adapt the one-story storage facility and garage for a conforming use, necessitating complete demolition of the building, at significant cost; and

WHEREAS, as to whether the use authorized by the grant would impair the appropriate use and development of adjacent properties, the applicant contends that it would not and notes that Use Group 16 has existed at the site for nearly 65 years with no negative effects on the surrounding conforming uses; further, because a portion of the building will be converted to Use Group 6, the intensity of the non-conforming use at the site will be diminished; and

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WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use from one non-conforming use to another non-conforming use which would be permitted under one of the provisions applicable to non-conforming uses as set forth in ZR §§ 52-31 to 52-36; and

WHEREAS, the applicant represents that its request for a change in use from a Use Group 16 use to a Use Group 6 use is be permitted pursuant to ZR § 52-34 (*Commercial Uses in Residence Districts*), which allows for a change in use from Use Group 16 to Use Group 6; further, consistent with ZR § 11-413, the introduction of Use Group 6 will not alter the essential character of the neighborhood, in that it is a less intense use than the previously-approved Use Group 16 uses and it will be more compatible with the nearby conforming uses; further, there are commercial overlays on both sides of Nostrand Avenue less than one block south of the site; and

WHEREAS, at hearing, the Board directed the applicant to study the effects of the proposal on parking in the surrounding community; and

WHEREAS, in response, the applicant conducted a parking demand study, an on-street parking survey, and a trip generation and parking accumulation analysis; based on the parking demand study, the proposal requires 35 parking spaces per day during the week and 36 parking spaces per day on the weekend, which are less than the 40 parking spaces to be provided at the site; and

WHEREAS, as to the on-street parking survey and the trip generation and parking accumulation analysis, according to the applicant, these studies indicate that, in the immediate vicinity, there is a minimum of 35 and a maximum of 85 hourly available parking spaces at any given time between 8:00 a.m. and 5:00 p.m. on a typical weekday, which, in addition to the proposed accessory parking for the site, will be more than sufficient to accommodate the parking demand generated by the proposal; and

WHEREAS, accordingly, the Board finds that there is ample parking for the proposed uses at the site; and

WHEREAS, the Board also directed the applicant to redesign the proposal to eliminate the initially proposed overhang for parking at the front of the site; and

WHEREAS, in response, the applicant revised the plans to reflect the elimination of the covered parking area; and

WHEREAS, based on the foregoing, the Board is

persuaded that the proposal will neither alter the essential character of the neighborhood, nor impair the appropriate use and development of adjacent properties; and

WHEREAS, based upon its review of the record, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413, and a reinstatement and change in use are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedures, issues a Type II under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, as amended, and makes each and every one of the required findings under ZR §§ 11-411 and 11-413, for a reinstatement of a prior Board approval of a public garage for vehicle storage and repair (Use Group 16) to retail stores (Use Group 6) and a warehouse (Use Group 16); *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received January 16, 2014"- (2) sheets and "February 23, 2014"- (1) sheet; and *on further condition*:

THAT the term of the variance will expire on April 29, 2024;

THAT the signage will comply with C1 zoning district regulations;

THAT no fewer than 40 parking spaces (20 spaces adjacent to the warehouse, 15 spaces at the corner of Albemarle Road and Nostrand Avenue, and five spaces within the warehouse) will be provided at the site;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all construction will be completed and a certificate of occupancy will be obtained by April 29, 2016;

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 shall 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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, April 29, 2014.**

**Printed in Bulletin Nos. 16-18, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

