

**81-12-BZ**

**CEQR #12-BSA-112Q**

APPLICANT – Eric Palatnik, P.C., for McDonald's Real Estate Co., owner.

SUBJECT – Application April 5, 2012 – Special Permit (§73-243) to permit the demolition and reconstruction of an eating and drinking establishment (Use Group 6) with an accessory drive-through and on-site parking. C1-3/R3-2/R3A zoning district.

PREMISES AFFECTED – 98-01/05 Metropolitan Avenue, northeast corner of 69th Road, Block 3207, Lot(s) 26 & 23, Borough of Queens.

**COMMUNITY BOARD #6Q**

**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 Aril 28, 2014, acting on DOB Application No. 420508766, reads:

Proposed reinstatement of existing Use Group – 6 eating and drinking establishment with accessory drive thru, requires special permit pursuant to zoning resolution section 73-243; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within an R3-2 (C1-3) zoning district, and also within an R3A zoning district, the operation of an existing accessory drive-through facility operating in conjunction with an eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on September 16, 2014, with a continued hearing on January 27, 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 6, Queens, expressed no objection to this application; and

WHEREAS, the subject site located on the north side of Metropolitan Avenue, between 69<sup>th</sup> Road and 70<sup>th</sup> Avenue, within an R3-2 (C1-3) zoning district, and also within an R3A zoning district, in Queens; and

WHEREAS, the site has approximately 222 feet of frontage along Metropolitan Avenue, and approximately 23,916 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 approximately 4,000 sq. ft. of floor area (0.15 FAR), an accessory drive-through, and 31 on-site accessory parking spaces; and

WHEREAS, the existing accessory drive-through was added to the eating and drinking pursuant to a special permit issued by the Board under BSA Cal. No. 614-83-BZ, the term of which was last extended on November 4,1998 and which expired on November 3, 2003; and

WHEREAS, BSA Cal. No. 614-83-BZ was granted and subsequently amended at a time when a C1-2 zoning district overlay extended across the site to a depth of 150 feet from Metropolitan Avenue and, as such, the existing accessory drive-through and accessory parking spaces were all located within the C1-2 overlay; and

WHEREAS, on October 29, 2007, the zoning map of the City of New York was amended so that the commercial overlay at the subject site (previously a C1-2 commercial overlay with a depth of 150 feet from Metropolitan Avenue) a C1-3 overlay with a depth of 100 feet from Metropolitan Avenue, thus the R3A portion of the subject zoning lot contains approximately 6 accessory parking spaces, a portion of the existing accessory drive-through and refuse storage enclosures servicing the site; and

WHEREAS, on January 31, 2014, DOB determined, pursuant to ZRD1 Reference No. 28643, filed under DOB Application No. 420508766, that “the commercial accessory uses located within the R3A District portion of the [subject] zoning lot may continue...”; 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 R3-2 (C1-3) 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 subject site reflects substantial orientation toward the motor vehicle; (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 vehicles; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site, which has two existing curb cuts on Metropolitan Avenue and another existing curb cut on 69<sup>th</sup> Road, and notes that the

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existing facility has been operating since 1984 pursuant to the approval of a special permit by this Board; and

WHEREAS, in addition, the applicant submitted a zoning analysis form reflecting that the facility complies with the accessory off-street parking regulations for the R3-2 (C1-3) zoning district; there are 31 accessory spaces on the site, 14 in excess of the 17 required spaces; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject site, which reflects substantial orientation toward motor vehicles and is predominantly commercial in nature; and

WHEREAS, the applicant notes that Metropolitan Avenue is one of the busiest commercial thoroughfares in Queens and that there are seven other eating and drinking establishments within a mile of the subject site; 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 subject site and there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant states that the impact of the drive-through upon residences is minimal, in that (a) all curb cuts will be located on Metropolitan Avenue and 69<sup>th</sup> Road, within the C1-3 overlay, thereby avoiding any adverse traffic impact on neighboring residential uses; (b) the hours of operation of the existing accessory drive-through facility are limited to 6:00 a.m. to 12:00 a.m.; (c) all lighting at the subject site will be directed away from adjacent residential uses; (d) an 8'-0" high fence with slats and landscaping along the property line will provide a buffer between the subject site and the neighboring residential uses; (e) the outdoor menu soundboard utilized by the operator of the subject site will be located 71'-0" from the residential use closest to the subject site, and will feature automatic sound adjustment to decrease with a reduction in ambient sound and will have a maximum sound pressure of 54dBA; (f) cedar planters will be used to close off parking spaces designates as spots 11, 12, 13, and 14 on the BSA-approved plans between the hours of 9:00 p.m. and 8:00 a.m.; (g) waste removal at the site will occur three times per week; and (h) the trash will be enclosed on three sides by a brick wall, and by a fence; and

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, 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. 12-BSA-112Q dated March 23, 2015; 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 an R3-2 (C1-3) zoning district, and also within an R3A 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 "Received January 18, 2015"- (7) sheets; and *on further condition*:

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

THAT the outdoor menu soundboard utilized by the operator of the subject site will be located 71'-0" from the residential use closest to the subject site and will feature automatic sound adjustment to decrease with a reduction in ambient sound and will have a maximum sound pressure of 54dBA;

THAT waste removal at the site will occur three times per week;

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

THAT cedar planters will be used to close off

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parking spaces designates as spots 11, 12, 13, and 14 on the BSA-approved plans between the hours of 9:00 p.m. and 8:00 a.m.;

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

THAT exterior lighting will be directed away from the nearby residential uses;

THAT all signage, including directional signs, will conform to applicable 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.**

