

195-02-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for McDonald's Real Estate Company, owner; Lauren Enterprises, lessee.

SUBJECT – Application December 2, 2013 – Extension of Term of a previously approved Variance (§72-21) permitting an eating and drinking establishment with an accessory drive through facility with a legalization of a small addition to the establishment, which expired on February 11, 2013; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 2797 Linden Boulevard, between Drew and Ruby Streets, Block 4471, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

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, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance permitting an eating and drinking establishment with an accessory drive-through within a residence district, which expired on February 11, 2013; and

WHEREAS, a public hearing was held on this application on October 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on January 27, 2015, and then to decision on April 14, 2015; and

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

WHEREAS, Community Board 5, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site spans the north side of Linden Boulevard, between Drew Street and Ruby Street, within an R4 zoning district; and

WHEREAS, the site, which is rectangular, has 100 feet of frontage along both Drew Street and Ruby Street and 200 feet of frontage along Linden Boulevard; and

WHEREAS, the site has 20,000 sq. ft. of lot area and is occupied by a one-story eating and drinking establishment with approximately 2,240 sq. ft. of floor area (0.11 FAR), 18 parking spaces, and a drive-through with a pickup window; and

WHEREAS, the applicant represents that the site has operated continuously as a McDonald's restaurant since 1972; and

WHEREAS, the Board has exercised jurisdiction over the site since October 31, 1972, when, under BSA Cal. No. 231-72-BZ, it granted, pursuant to ZR § 72-21,

an application to permit in an R4 zoning district the construction of a one-story building to be operated as an eating and drinking establishment (Use Group 6) contrary to use regulations, for term of 10 years, to expire on October 31, 1972; and

WHEREAS, the grant was amended at various times in subsequent years, including on May 8, 1979, when the Board amended the grant to authorize the operation of an accessory drive-through; in addition, on that same date, the Board extended the term of the grant for ten years, to expire on May 8, 1989; and

WHEREAS, on July 11, 1989, the Board granted a further extension of term, for ten years, to expire on May 8, 1999; and

WHEREAS, on February 11, 2003, under the subject calendar number, the Board granted an application pursuant to ZR § 72-21 to permit the reestablishment of the expired variance authorizing the eating and drinking establishment and accessory drive through, for a term of ten years, to expire on February 11, 2013; and

WHEREAS, accordingly, the applicant now seeks an extension of the term of the variance; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, allow an extension of the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide additional information regarding the noise management equipment for the menu board; (2) clarify the hours of the garbage collection; (3) provide photographs of the site demonstrating that the signage complies with the C1 regulations; and (4) provide proof that neighbors have been notified of the proposed 24-hour operation of the establishment; and

WHEREAS, in response, the applicant provided the menu board information and noted that the volume is reduced nightly at 9:00 p.m., clarified the hours of the garbage collection (Sundays and Wednesdays, between 9:00 p.m. and 10:00 p.m.), submitted photographs demonstrating compliance with the C1 sign regulations, and submitted proof of notification; and

WHEREAS, 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated February 11, 2003, 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 February 11, 2023; *on condition on condition* that all work will substantially conform to drawings, filed with this application marked 'Received August 22, 2014' –(7) sheets; and on further condition:

THAT the term of the variance shall expire on February 11, 2023;

195-02-BZ

THAT the signage shall comply with the C1 regulations;

THAT landscaping shall be maintained in accordance with the BSA-approved plans;

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

THAT the menu board volume shall not exceed 50 decibels between the hours of 9:00 p.m. and 8:00 a.m.;

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

THAT a certificate of occupancy shall be obtained by April 15, 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); 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, April 15, 2015.

A true copy of resolution adopted by the Board of Standards and Appeals, April 14, 2015.

Printed in Bulletin Nos. 16-17, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

