



**Board of Standards and Appeals**

250 Broadway, 29th Floor  
 New York, NY 10007  
 212-386-0009 - Phone  
 646-500-6271 - Fax  
 www.nyc.gov/bsa

**SPECIAL ORDER CALENDAR (SOC)**  
 Application Form

BSA APPLICATION NO. 552-91-BZ

Section A

Applicant/  
Owner

Eric Palatnik <small>NAME OF APPLICANT</small>			2027 LLC <small>OWNER OF RECORD</small>		
32 Broadway, Suite 114 <small>ADDRESS</small>			2027 Emmons Avenue <small>ADDRESS</small>		
New York <small>CITY</small>	NY <small>STATE</small>	10004 <small>ZIP</small>	Brooklyn <small>CITY</small>	NY <small>STATE</small>	11235 <small>ZIP</small>
212 <small>AREA CODE</small>	425-4343 <small>TELEPHONE</small>		<small>LESSEE / CONTRACT VENDEE</small>		
212 <small>AREA CODE</small>	968-7129 <small>TELEPHONE</small>		<small>ADDRESS</small>		
eric@ericpalatnikpc.com <small>EMAIL</small>			<small>CITY STATE ZIP</small>		

Section B

Site Data

2807 East 21st Street a/k/a 2073-2063 Emmons Avenue, Brooklyn 11235  
STREET ADDRESS (INCLUDE ANY A/K/A) ZIP CODE

Northeast corner of Emmons Avenue and 21st Street, bounded to the north by Shore Parkway  
DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS

8779 <small>BLOCK</small>	50-66 <small>LOT(S)</small>	Brooklyn <small>BOROUGH</small>	15 <small>COMMUNITY DISTRICT</small>	n/a <small>LANDMARK/HISTORIC DISTRICT</small>
Hon. Chaim Deutsch <small>CITY COUNCILMEMBER</small>		R5/C2-2 Special Sheepshead Bay District <small>ZONING DISTRICT (include special zoning district, if any)</small>		29a <small>ZONING MAP NUMBER</small>

Section C

Description

(LEGALIZATION  YES  NO  IN PART )

Application filed pursuant to ZR 72-01 and 72-02 to re-open and amend previous BSA Cal. No. 552-19-BZ, Vol. 11, a previously granted variance which permitted construction of a new two (2) story and cellar commercial building. If approved, the modification would allow construction of an additional 10,000 square foot third floor for Use Group 6 office space to offset substantial revenue loss resulting from Hurricane Sandy damage. Application also seeks a a reduction in required parking.

Section D

Actions

**APPLICATION IS HEREBY MADE TO:**

- Waive of the Rules of Practice and Procedure (*Explain in your statement*)
- Extension of Time to:
  - Complete construction  Obtain a Certificate of Occupancy Expiration Date: \_\_\_\_\_
- Amendment to Previous Board Approval
- Extension of Term of the:
  - Variance  Special Permit For a term of \_\_\_\_ years Expiration Date: \_\_\_\_\_
- Other (*Explain in your statement*)

Authorizing Section(s) of the Zoning Resolution:

§ 11-411  § 11-412  § 11-413  §§ 72-01 and 72-22  § 73-11  Other \_\_\_\_\_

**Section E**

Department  
Of  
Buildings  
Information

	YES	NO
1. Have plans been filed? .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Have plans been approved? ..... (If Yes, Date Approved <u>04/10/1996</u> )	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Has a permit been obtained? .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(If Yes, Permit No. <u>3P0008990</u> Date Issued <u>09/30/1996</u> )		
4. Is work in progress? .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(If Yes, Percentage of work completed <u>100</u> %)		
5. Has a temporary or permanent Certificate of Occupancy been obtained? .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(If Yes, Expiration Date _____ Attach a copy)		

If you have answered "No" to any of these questions, include a paragraph in your statement describing the reason(s) for delay and the projected schedule of completion.

**Section F**

Board  
History

List all prior Board actions associated with the subject Zoning Lot and attach one copy of each resolution:

On July 18, 1995, when the Zoning District was R5/C2-2, an application was granted by the Board under Section 72-21 to permit:

construction of a two-story and cellar commercial building with an accessory garage.

**Section G**

Inspection  
and  
Compliance

	YES	NO
1. Have you reviewed the Board's case file? .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Have you recently inspected the premises and surrounding area? .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(If Yes, date of most recent site inspection _____)		
3. Did you find:		
a. Compliance with the terms and conditions of the Board's resolution? .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Attach a completed Certificate of Inspection and Compliance		
b. Any significant condition changes (e.g. rezoning, city map amendments, recent developments) within the affected area since the Board's last action on this application?.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If the answer is "yes" to any of the questions below, explain further in your statement.		
4. Is there currently a proposal before the City Planning Commission to change the subject Zoning District, or any other action which includes the premises? .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(File / CP No. _____)		
5. Are there any outstanding violation(s) on the premises? .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(If Yes, submit a DOB BIS printout)		
6. Is there any other application before the Board which affects the premises? .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(If Yes, Cal No. _____)		
7. Is there any other application at any government agency which affects the premises? .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Section H**

Signature

I HEREBY AFFIRM THAT BASED ON INFORMATION AND BELIEF, THE ABOVE STATEMENTS AND THE STATEMENTS CONTAINED IN THE PAPERS ARE TRUE.

Signature of Applicant, Corporate Officer or Other Authorized Representative: Eric Palatnik

Title: Authorized Representative

NOTARY PUBLIC STATE OF NEW YORK  
 QUALIFIED IN SHERBORN COUNTY  
 COMMISSION EXPIRES 08/18/07  
 SWORN TO ME THIS 21 DAY OF May 2014

NOTARY PUBLIC

**ERIC PALATNIK, P.C.**

ATTORNEY AT LAW  
32 BROADWAY, SUITE 114  
NEW YORK, NEW YORK 10004

(212) 425-4343  
FAX (212) 968-7129  
E-MAIL ERIC@ERICPALATNIKPC.COM

May 23, 2014

**STATEMENT OF FACTS AND FINDINGS**

**Premises:** B.S.A. Cal. No. 552-91-BZ  
2807 East 21<sup>st</sup> Street  
a/k/a 2073-2063 Emmons Avenue  
Block 8779, Lots 50, 53, 54, 55, 57, 60, 66  
Brooklyn, New York

---

**INTRODUCTION**

The instant application is filed pursuant to §72-01 and §72-22 of the Zoning Resolution of the City of New York, as amended (“ZR” or “Zoning Resolution”) to re-open and amend previous BSA Calendar No. 552-91-BZ, Vol. II, last acted upon by your Board in July of 1995 (the “Previous Approval”). The Previous Approval granted a variance which permitted in a C2-2 (R5) district, within the Special Sheepshead Bay District (“SSBD”), the proposed construction of a new two (2) story and cellar commercial building (Use Group 6 and 10), with an accessory parking garage, to be occupied by a clothing store, which does not conform to the special district regulations or the underlying district use regulations in that it exceeds size limitations regarding frontage and maximum floor area, contrary to ZR §32-19 and §94-061, on condition.

The instant application seeks to amend the Previous Approval to add an additional floor with 10,000 square feet of Use Group 6 office space. As discussed below, the amendment is required to offset a substantial loss of revenue resulting from damage to the step down, cellar level retail space caused by Hurricane Sandy in October, 2012. The proposed enlargement would trigger the requirement of an additional 33 off street accessory parking spaces, in addition to the existing 182 parking spaces, for a total of 215 required accessory off street parking spaces. This application seeks to reduce the number of required accessory off street parking spaces from 215

## ERIC PALATNIK

to 198 based upon the historic under-utilization of the existing spaces and estimated future demand.

### PREVIOUS BSA ACTIONS

On **January 19, 1994**, under B.S.A. Cal. No. 552-91-BZ, the Board denied an application for a variance to permit in an R5 / C2-2 zoning district, within the SSBD, sub-district D, the construction of a two-story and cellar commercial building with an accessory garage. The Board determined that the applicant had not presented sufficient evidence to satisfy ZR § 72-21(a).

The Board reasoned that the evidence before it, which consisted of soil borings and cost estimates to connect to a sewer line, did not establish a unique condition to the site. The need to construct on piles, the cost of removing the existing building along with its foundation, and the need to establish a sewer connection, did not create an unnecessary hardship. The Board concluded that insufficient evidence existed to make the (a) findings under ZR § 72-21 and did not address the other findings.

On **July 18, 1995**, the Board granted an application to permit in an R5 /C2-2 zoning district, within the SSBD, sub-district D, the construction of a new two (2) story and cellar commercial building (Use Group 6 and 10), with an accessory parking garage, to be occupied by a clothing store which does not conform to the special district use regulations.

The Board granted the owner's application for a rehearing and considered additional data on the soil conditions at the site and in the neighborhood. The Board made a finding that the soil conditions on the site are unique and made a finding that the owner could not earn a reasonable return if the lot were to be developed in strict conformance with the Zoning Resolution.

The Board also determined that "eliminat[ing] the proposed 'stepdown' stores at [the] cellar level which are as-of-right ... **would adversely affect the economic feasibility of the development as proposed...**" (Resolution of the Board of Standards and Appeals for 552-91-BZ Vol. II, dated July 18, 1995, fourth page at ¶ 14) (emphasis added).

EXISTING CONDITIONS AND SURROUNDED USES

**I. Existing Conditions**

The Premises is located at the southwest corner of East 21<sup>st</sup> Street and Emmons Avenue in the Sheepshead Bay section of Brooklyn. It is in an R5 / C2-2 zoning district in the Special Sheepshead Bay District (“SSBD”), sub-district D. It is located in Brooklyn’s Community District #15.

The Premises is a corner and a through lot which occupies tax lots 60, 66, 57, 55, 54, 53, and 50 on Block 8779, comprising a total lot area of 45,737 square feet. The Premises has a frontage of 261 feet on Emmons Avenue, 268 feet on East 21<sup>st</sup> Street and 260 feet along Shore Parkway. The lot depth varies from 168.3 feet at the East 21<sup>st</sup> Street frontage to 183.5 feet on its east side.

The Premises is developed with a two-story and cellar 79,695.55 gross square foot (“gsf”) commercial building with 182 accessory parking spaces in the parking garage at the rear of the site. It has a floor area ratio of 1.0; an open space ratio of 40%; a wall height of 40’0”; a total height of 40’0”; a front yard of 0’0”; two side yards of 0’0”; and a rear yard of 0’0”.

The Previous Approval allowed for 45,882 zoning square feet (“zsf”) of floor area for an FAR of 1.0 over three floors (a cellar and two above-grade floors). The actual building floor area totals 45,637 zsf, which comprises the following:

- The first floor has a total floor area of 19,201 zsf, which consists of a Use Group 6 restaurant and a vacant Use Group 10 department store (i.e. the now-bankrupt Loehmann’s clothing store);
- The second floor has a floor area of 20,647 zsf, which consists of a Use Group 6 restaurant and additional department store space (also formerly occupied by Loehmann’s);

## ERIC PALATNIK

- The accessory parking garage is located at the rear of the Premises, of which 5,789 zsf is located more than 23 feet above curb level and is therefore included in the floor area total.

In addition to the above-described floor area, the below-grade cellar includes 14,754 gsf of Use Group 6 retail and restaurants, which is not included in the floor area total.

### II. Conditions After Hurricane Sandy

Hurricane Sandy made landfall in the City of New York during the late hours of October 30, 2012. According to the Tropical Cyclone Report on the hurricane published by the National Hurricane Center (the “NHC Report”), “because of its tremendous size... Sandy drove a catastrophic storm surge into the New Jersey and New York coastlines.” Moreover, on the “southward facing shores of Long Island, the surge was accompanied by powerful damaging waves.”<sup>1</sup>

As a result of the tremendous storm surge, Brooklyn waterfronts experienced inundations (i.e. total water levels *above ground level*) between three (3) and six (6) feet.<sup>2</sup> Data compiled by National Ocean Service shows that Brooklyn experienced storm surges up to 12.65 feet.<sup>3</sup> The U.S. Geological Survey measured a storm tide high water mark of 12.7 feet at Breezy Point Queens,<sup>4</sup> south of Sheepshead Bay across the Rockaway Inlet from the Premises, with an inundation of approximately 5.4 feet in the Rockaway Inlet / Sheepshead Bay area.<sup>5</sup>

The Premises was severely impacted by these storm surges and ensuing inundations. The Sheepshead Bay Piers and the waters of the Sheepshead Bay Inlet are located directly south of the Premises, across Emmons Avenue. The step down cellar level commercial space suffered severe flooding and damage. Moreover, due to its unique physical attributes, it was and

---

<sup>1</sup> The NHC Report, available at [http://www.nhc.noaa.gov/data/tcr/AL182012\\_Sandy.pdf](http://www.nhc.noaa.gov/data/tcr/AL182012_Sandy.pdf) defines “storm surge” as “the abnormal rise of water generated by a storm, over and above the predicted astronomical tide, and is expressed in terms of height above normal tide levels.” NHC Report at 8.

<sup>2</sup> Id.

<sup>3</sup> Id. at 82.

<sup>4</sup> Id. at 90.

<sup>5</sup> Id. at 150.

## **ERIC PALATNIK**

continues to be more vulnerable to damage from storm surges and flooding than surrounding commercial spaces, which either do not utilize cellars for comparable retail space, or simply do not have cellars. For this reason, the levels of inundation experienced at the cellar level of the Premises was more dramatic than in other retail and commercial buildings facing Sheepshead Bay along Emmons Avenue.

Sheepshead Bay is likely to flood again. The below grade retail spaces have lost value. That value was critical to the economic viability of the entire development. The resulting financial impact on the Premises has been substantial. Prior to Hurricane Sandy, the value of the cellar space was approximately the same rate as the first floor retail space. After the storm, the value of the cellar space has been greatly reduced: the cellar space can now only be rented at 40% of the first floor value. Considering that the value of this space was integral to the original grant of a variance, the instant modification is essential to the continued economic of the building.

### **III. Surrounding Uses**

The Land Use Study identifies properties within 800 feet of the Premises and analyzes their use of the cellar level as follows:

- 1809 East 19<sup>th</sup> Street, an eating and drinking establishment located at the southwest corner of Emmons Avenue and Sheepshead Bay Road, El Grecko Restaurant, does not have a cellar.
- 1901 Emmons Avenue, the historic Lundy's building which is occupied by Masal Café, Cherry Hill Gourmet and Momoyama Sushi has a cellar which is utilized for storage (accessory to ground floor use).
- 2001 Emmons Avenue, Baku Restaurant, utilizes the cellar level for kitchen, storage, mechanical and toilets.
- 2011 Emmons Avenue which is comprised of Randazo's Clam Bar, Fusion, Tzar, Mambo Sushi and Yiasou Restaurant does not have a cellar level.
- 2211 Emmons Avenue, Sunrise Senior Living and Medical Offices, does not have a cellar pursuant to their Certificate of Occupancy.

## ERIC PALATNIK

- 2269 Emmons Avenue, a building which houses Siam Orchid, China Max, Desert Palace and Top Burger, does not have a cellar.

A location map and photos of all of the aforementioned properties appears on pages ten (10) through fifteen (15) of the Land Use Study. As shown therein, none of these properties utilize their cellar level for income generation in the same manner as the subject Premises.

### THE PROPOSED DEVELOPMENT

The proposed enlargement seeks to offset the loss of revenue at the cellar level (14,755 gsf) with approximately 10,000 zsf of new Use Group 6 professional office space, meeting rooms, vestibules and restrooms on a new third floor, as shown on Drawing A001.00 of the proposed plans.

The proposed enlargement will result in a total building floor area of 55,637 sq. ft. and a floor area ratio of 1.2. The total height of the building will increase from 40'0" to 55'0" *above base plane*, which equates to a proposed height of 60'0" *above curb level*. The proposed enlargement will have a setback of 15'0".

Plans were filed with the Department of Buildings under Job Number: 320894485 to permit the proposed enlargement. The following objections, dated April 24, 2014, were issued:

"1. Floor area ratio of 1.216 or a proposed 55,637.73 sq. ft. exceeds permitted floor area ratio of 1.0 or 45,637 sq. ft. as per ZR 94-092 – zoned an R5 District with a C2-2 District Overlay located in the Sheepshead Bay Special Purpose District – Sub district "D"

"2. The proposed development does not comply with the Parking requirements for District C2-2 as per Z.R. 36-21 with a parking requirement of 215 Spaces for the proposed 55,637.73 sq. ft. addition. The existing accessory parking garage only provides 182 parking spaces – which is 33 spaces less than the required number of parking spaces."

“3. Proposed Development Height of 60'-0” above curb level (or 55’0” above base flood plain) exceeds allowable building height of 55’0” above curb level as per ZR 94-10 – Height requirements in the Sheepsheadbay special purpose district.

“4. Proposed Development does not provide a rear yard and not comply with a minimum 20’-0” Rear Yard as per Z.R. 33-283 Rear Yard Equivalent.”

“5. Existing and Proposed Development Use Group 10 – Department Store Use – Does not conform with Sheepsheadbay Special purpose district Use Regulations as per Z.R. 94-062.”

### THE INSTANT APPLICATION

As stated above, this is an application to re-open and amend a previously granted variance which permitted the construction of the subject building. The applicant now requests that the Board amend the grant to permit the construction of an additional floor with 10,000 square feet of Use Group 6 office space. This will enable the applicant to overcome financial losses attributable to Hurricane Sandy and once-again realize a reasonable return on investment. The applicant further requests a reduction in the amount of new parking triggered by the proposed enlargement.

#### **I. The Amendment is Necessary to Earn a Reasonable Return**

In its 1995 findings for B.S.A. Cal. No. 552-91 BZ Vol. II, the Board emphasized that the cellar level retail stores could not be eliminated from the proposal without “adversely affect[ing] the economic feasibility of the development as proposed.” (Supra). Thus, from its inception and development, the cellar level retail use has been an integral component of the overall financial feasibility of operations at the Premises.

Hurricane Sandy greatly altered the character of the neighborhood in which the Premises is located. The Land Use Study provides, in relevant part, as follows:

As shown on the attached flood maps, areas once thought to be at the edge of the “AE Zone” (at least 1% annual flood likelihood zone), are now located deep within it. And, as shown by the map illustrating flooding from Hurricane Sandy, areas previously thought to be far removed from the threat of flooding were devastated by the storm...

## ERIC PALATNIK

In short, Sheepshead Bay is likely to flood again, and the below grade retail stores at the Site are likely to be underwater again...

(Land Use Study at 3; see also attachments 16, 17 and 18, showing flooding and flood risk at and around the Premises).

Consequently, the value of the cellar retail space has been greatly diminished. The space is still functional and attracting tenants. However, it is the *rent* that tenants are willing to pay, and the amount of *income* generated thereby, that has been substantially reduced. The enclosed feasibility study prepared by Freeman Frazier & Associates, Inc. (the "Financial Study"), provides, in relevant part, as follows:

Since Hurricane Sandy in November 2012 the value of the retail space below grade has been devastated. In the Approved Development, the below grade retail was valued at approximately the same rate as the first floor retail. The value of this space was integral to the original grant and to the continued viability of the building. As a result of Hurricane Sandy, **this space has lost significant value and can only be rented at 40% of the first floor.** In order to provide additional income, the Proposed Amended Development adds additional income producing commercial floor area on the roof of the building. (Financial Study at 1) (emphasis added).

The Financial Study further explains that the value of the building post-Hurricane Sandy (taking into account the damage and loss of revenue attributable to the cellar level retail space), is approximately \$17,613,000. (Id. at 7). The development cost for the existing building is \$18,629,000. (Id.). Therefore, the existing building is not feasible (i.e. the building is now worth less than it cost to build). If the instant modification is granted, the proposed enlargement would raise the development costs to approximately \$23,184,000, while raising the building value to \$23,257,000 (a mere \$73,000 difference). (Id. at 8). Accordingly, the proposed enlargement allows the applicant to almost precisely offset the loss in value suffered after Hurricane Sandy while still earning a reasonable return on investment.