

**185-05-BZ**

**CEQR #06-BSA-011Q**

APPLICANT – Manatt, Phelps & Phillips, LLP (Carol E. Rosenthal, Esq.) for 62-02 Roosevelt Avenue Corporation, owner.

SUBJECT – Application August 5, 2005 – under Z.R. §72-21 to allow a dance floor (Use Group 12) to be constructed in an existing eating and drinking establishment located in an R6/C1-2 zoning district, which is contrary to Z.R. §32-15.

PREMISES AFFECTED – 62-02 Roosevelt Avenue, South side of Roosevelt Ave. 101ft from the corner formed by the intersection of the LIRR tracks with Roosevelt Avenue and 192’59” from the corner formed by the intersection of Roosevelt Avenue and 63<sup>rd</sup> Street, Block 1294, Lot 58, Borough of Queens.

**COMMUNITY BOARD #2Q**

**APPEARANCES –**

For Applicant: Chanin French.

**ACTION OF THE BOARD -** Application granted on condition.

**THE VOTE TO GRANT -**

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

**THE RESOLUTION -**

WHEREAS, the decision of the Queens Borough Commissioner, dated July 15, 2005, acting on DOB Application No. 402105253 reads:

“Proposed eating and drinking establishment with entertainment and a capacity of more than 200 persons (UG 12) in C1-2 district and contrary to Section 32-00 Z.R.”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, in an R6 zoning district with a C1-2 commercial overlay, conversion of the first floor of an existing two-story building from an eating and drinking establishment (UG 6) to an eating and drinking establishment with entertainment and dancing (UG 12), contrary to Z.R. § 32-00; and

WHEREAS, a public hearing was held on this application on November 1, 2005 after due notice by publication in *The City Record*, with a continued hearing on December 6, 2005, and then to decision on January 10, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board 2, Queens, initially approved this application with no conditions; and

WHEREAS, subsequent to learning about certain community concerns related to the operation of the premises, the Community Board issued a new report in support of this application so long as the owner complies

with certain conditions related to the operation of the premises; and

WHEREAS, the applicant has agreed to comply with the Community Board’s recommended conditions, certain of which are reflected below; and

WHEREAS, the subject zoning lot is located on the south side of Roosevelt Avenue between the Long Island Railroad and 63<sup>rd</sup> Street, and has a lot area of 7,345 sq. ft.; and

WHEREAS, the existing two-story building has 12,170 sq. ft. of floor area, and contains a restaurant use on the first floor and vacant offices on the second floor; and

WHEREAS, the total floor area of the first floor is 5,960 sq. ft. and the total floor area of the second floor is 6,210 sq. ft.; and

WHEREAS, the applicant represents that the building was used as a theatre until 1986, and then remained vacant until 2004; and

WHEREAS, in 2004, the owner opened the restaurant on the ground floor; the applicant represents that it has unsuccessfully attempted to rent the office space on the second floor; and

WHEREAS, the applicant represents that the proposed stage area and dance floor will occupy 446 sq. ft. of the first floor; the remaining floor area will be used for restaurant use and for a waiting area; and

WHEREAS, the applicant represents that the site has approximately 31 ft. of frontage on Roosevelt Avenue, and has no other street frontage; and

WHEREAS, the applicant further represents that the site is irregularly shaped, with the majority of the site located adjacent to the Long Island Railroad, and a small “flagpole” portion of the site extending from the rear to Roosevelt Avenue; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the lot is irregularly-shaped; (2) it has a minimal amount of street frontage in relation to the size of the lot; and (3) it is close to the Long Island Railroad and a subway line; and

WHEREAS, the applicant represents that because the site only has 31 ft. of street frontage, it is difficult to attract customers to fill the large restaurant, due to limited street visibility; and

WHEREAS, the applicant represents that the street frontage of the lot represents 0.5% of the total area of the ground floor of the building; the other retail buildings in the area have street frontages of between 1.25% and 2.22% of the total area of the ground floor of the building; and

WHEREAS, in addition, the applicant represents that noise emanating from the surrounding train lines discourages customers from coming to the restaurant, and

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discourages other conforming residential and commercial uses; and

WHEREAS, the applicant further represents that the lot would not be conducive to conforming residential uses because the minimal street frontage relative to the size of the site would not provide adequate access to light and air in the front of the building; and

WHEREAS, the applicant states that any residences would have to vent into the undersized rear yard or a onto a new interior court, which would impact the ability to maximize the allowable floor area; and

WHEREAS, the Board finds that, when considered in the aggregate, the factors stated above create unnecessary hardship and practical difficulties in strictly conforming with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the applicant submitted a feasibility study that analyzed the following scenarios: an as-of-right retail/office use; an as-of-right restaurant/office use; and the proposed use; and

WHEREAS, the feasibility analysis concludes that only the proposed use will garner a reasonable rate of return; and

WHEREAS, therefore, the Board has determined that because of the subject lot's unique physical conditions there is no reasonable possibility that development in strict conformity with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood, and that the proposed use is compatible with adjacent and nearby uses; and

WHEREAS, the applicant represents that Roosevelt Avenue near the site consists almost entirely of commercial uses in low-rise buildings, including retail stores, beauty salons, restaurants, a fish market and an off-track betting parlor; and

WHEREAS, the applicant also submitted a land use map that reflects that the site is bordered by two manufacturing buildings, two commercial buildings, and the Long Island Railroad; and

WHEREAS, the applicant states that there are no residences adjacent to the site or other uses incompatible with late-night activities such as dancing; and

WHEREAS, the Board asked the applicant to review the requirements for a special permit under Z.R. § 73-244, which would allow similar relief as that being sought in this application, if the site was located in a zoning district where the special permit was available; and

WHEREAS, in response, the applicant provided the Board with an analysis of how it meets the findings under the special permit; and

WHEREAS, the applicant states that it is providing

the minimum patron waiting area required by the special permit; and

WHEREAS, in addition, the applicant has submitted a traffic study that shows that the hours of greatest activity at the restaurant do not coincide with peak traffic hours, and that there is sufficient on-street parking in the area to accommodate the proposed use, as well as access to subways and the Long Island Railroad; and

WHEREAS, finally, the applicant has conducted a noise analysis that shows that there are no residential uses so near the site that they would be impacted by the proposed use; and

WHEREAS, the Board observes that there are no residential uses adjacent to the site and that the site is bordered by commercial uses and a railway cut; and

WHEREAS, in addition, the Board observes that the applicant has agreed to certain conditions on the operation of the establishment that are designed to ensure that it will have minimal impacts, certain of which are conditions of this grant; and

WHEREAS, therefore, the Board finds that the proposed application will not alter the essential character of the surrounding neighborhood, impair the use or development of adjacent properties nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, based upon the above, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; 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. 06BSA011Q, dated August 5, 2005; 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; Construction Impacts and Public Health; and

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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 617.4, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under Z.R. § 72-21, to permit, in an R6 zoning district with a C1-2 commercial overlay, conversion of the first floor of an existing two-story building from an eating and drinking establishment (UG 6) to a 5,960 sq. ft. eating and drinking establishment with entertainment and dancing (UG 12), for a term of two years, contrary to Z.R. § 32-00; *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 December 12, 2005"—one(1) sheet; and *on further condition*:

THAT this grant shall be for a term of two years, expiring on January 10, 2008;

THAT the hours of operation shall be: 8 AM to 2 AM Monday through Wednesday and 8 AM to 4 AM Thursday through Sunday;

THAT the maximum total occupancy of the first floor shall be 269 persons;

THAT there shall be a maximum of 50 persons on the dance floor, as indicated on the BSA-approved plans;

THAT the first floor shall have a maximum floor area of 5,960 sq. ft., including a waiting area of 1,076 sq. ft. (with a rate of 4 sq. ft. per occupant) and a dance floor of 446 sq. ft.;

THAT from 8 PM until closing, Thursday through Sunday, a minimum of one security guard shall provide security services and ensure that patrons do not congregate on the sidewalk near the entrance;

THAT the above conditions shall be listed 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;

THAT the approved plans shall be considered approved only for the portions related to the specific relief

granted; and

THAT the Department of Buildings 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, January 10, 2006.

**A true copy of resolution adopted by the Board of Standards and Appeals, January 10, 2006.**

**Printed in Bulletin Nos. 1-3, Vol. 91.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**