

2019-58-BZ

CEQR #19-BSA-104Q

APPLICANT – Law Office of Jay Goldstein, for JSB Realty No. 2, LLC, owner; CEC Entertainment d/b/a Chuck E. Cheese’s, lessee.

SUBJECT – Application March 19, 2019 – Special Permit (§73-44) to permit the operation of an Eating and Drinking Establishment with entertainment and a capacity of more than 200 persons (UG 12A) (*Chuck E. Cheese’s*) contrary to ZR §32-21. C2-2 zoning district. PREMISES AFFECTED – 133-35 79th Street, Block 11359, Lot 1, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 8, 2019, acting on DOB Application No. 421894686, reads in pertinent part:

The proposed Use Group 12A eating and drinking establishment is contrary to Zoning Resolution Section 32-21 as it is not permitted within a C2-2 zoning district; and

WHEREAS, this is an application for a special permit, pursuant to ZR §§ 73-244 and 73-03, to permit the operation of an eating or drinking establishment with entertainment and a capacity of more than 200 persons, contrary to ZR § 32-21; and

WHEREAS, a public hearing was held on this application on July 23, 2019, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Community Board 10, Queens, recommends approval of this application on condition that the grant be operator-specific, to Chuck E. Cheese; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southeast corner of 79th Street and South Conduit Avenue, within an R4 (C2-2) zoning district, in Queens; and

WHEREAS, the site is an irregularly shaped lot with approximately 764 feet of frontage along 79th Street, 423 feet of frontage along South Conduit Avenue, 77,132 square feet of lot area is occupied by an existing one- (1) story plus cellar and mezzanine commercial building; and

WHEREAS, ZR § 73-244 reads as follows:

In C2, C3, C4, C6-4, M1-5A, M1-5B, M1-5M and M1-6M Districts, the Special

Hudson Square District and the *Special Tribeca Mixed Use District 1*, the Board of Standards and Appeals may permit eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing, for a term not to exceed three years, provided that the following findings are made:

- (a) that a minimum of four square feet of waiting area within the *zoning lot* shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. A plan shall be provided to the Board to ensure that the operation of the establishment will not result in the gathering of crowds or the formation of lines on the *street*;
- (b) that the entrance to such *use* shall be a minimum of 100 feet from the nearest *Residence District* boundary;
- (c) that such *use* will not cause undue vehicular or pedestrian congestion in local *streets*;
- (d) that such *use* will not impair the character or the future use or development of the surrounding residential or mixed use neighborhoods;
- (e) that such *use* will not cause the sound level in any affected conforming *residential use, joint living-work quarters for artists or loft dwelling* to exceed the limits set forth in any applicable provision of the New York City Noise Control Code; and
- (f) that the application is made jointly by the owner of the *building* and the operators of such eating or drinking establishment.

The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, specification of acoustical insulation, maximum size of establishment, kinds of amplification of musical instruments or voices, shielding of flood lights, adequate screening, curb cuts or parking.

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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Any violation of the terms of a special permit may be grounds for its revocation.

* In C4 Districts where such #use# is within 100 feet from a #Residence District# boundary

** In C6-4 Districts mapped within that portion of Community District 5, Manhattan, bounded by West 22nd Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant proposes to operate an eating or drinking establishment with entertainment and a capacity of more than 200 persons located on the ground floor and mezzanine, which the applicant plans to modify; and

WHEREAS, the applicant represents that the proposed eating or drinking establishment will operate as “Chuck E. Cheese” with the following hours of operation: Sunday through Thursday, 9:00 a.m. to 9:00 p.m., and Friday and Saturday, 9:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant represents that the total occupancy will be 456 occupants on the ground floor and proposes to provide two enclosed (2) waiting areas, one (1) on the new mezzanine with 1,904 square feet, which is more than the 1,824 square feet required for 456 occupants, as well as a 210 square foot waiting area on the ground floor, accommodating an additional 52 occupants, to service any patrons in need of assistance; and

WHEREAS, the Board finds that the subject eating or drinking establishment will provide a minimum of four (4) square feet of waiting area within the zoning lot for each person permitted under the occupant capacity determined by the New York City Building Code; and

WHEREAS, the applicant represents that the entrance to the subject building is located over 200 feet away from the nearest residential zoning district, without commercial overlay; and

WHEREAS, the Board finds that the entrance to the proposed eating or drinking establishment is a minimum of 100 feet from the nearest boundary of a residential zoning district; and

WHEREAS, the applicant states that the proposed establishment will be located within an existing large commercial shopping center, used in conjunction with

adjoining tax lots, and will contain 570 parking spaces, 20 spaces beyond what would be required as per the Zoning Resolution, and proposes waiting areas larger than is required, such that patrons will be able to wait within the space and not on the streets; and

WHEREAS, the Board finds that the subject eating or drinking establishment will not cause undue vehicular or pedestrian congestion in local streets; and

WHEREAS, the applicant submitted a land-use radius diagram demonstrating that the nearest residential use is located over 200 feet away from the subject site and represents that the proposed operation, which is taking over space formerly occupied by a commercial tenant within a large commercial shopping center, does not utilize loud amplified sound and will not pose a risk that would impair the character of the surrounding neighborhood; and

WHEREAS, the Board finds that the subject establishment will not impair the character or the future use or development of the surrounding residential or mixed-use neighborhoods; and

WHEREAS, the applicant states that the proposed operation will not exceed any applicable provision of the New York City Noise Control Code and is located entirely within an existing shopping center; and

WHEREAS, the Board finds that the subject establishment will not cause the sound level in any affected conforming residential use to exceed applicable limits set forth in the New York City Noise Control Code; and

WHEREAS, the applicant has submitted authorizations from the building owner as well as the director of licensing for the operator of the proposed eating or drinking establishment; and

WHEREAS, the Board finds that this application is made jointly by the building owner of and the operator of the subject eating or drinking establishment; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-244 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement (“EAS”) Short Form, CEQR No. 19BSA104Q, dated March 18, 2019; and

WHEREAS, the EAS documents state that the proposed eating or drinking establishment with entertainment and a capacity of more than 200 persons will not have significant adverse impacts on Land Use,

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Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, the Board has determined that the proposed operation at the premises will not have a significant adverse impact on the environment; and

WHEREAS, in light of the foregoing, the Board has determined that the requested special permit, permitting the proposed eating or drinking establishment with entertainment and a capacity of more than 200 persons, is appropriate, subject to conditions set forth below.

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 and § 6-07(b) of 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 §§ 73-244 and 73-03 to permit, in an R4 (C2-2) zoning district, the operation of an eating or drinking establishment with entertainment and a capacity of more than 200 persons (Use Group 12); *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 23, 2019" Five (5) sheets; and *on further condition:*

THAT the term of this grant shall be for three (3) years, expiring July 23, 2022;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-58-BZ"), shall be obtained within three (3) years, by July 23, 2022;

THAT substantial construction shall be completed in accordance with ZR § 73-70, by July 23, 2023;

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 Department of Buildings must ensure compliance with all of the applicable provisions of the

A true copy of resolution adopted by the Board of Standards and Appeals, July 23, 2019.

Printed in Bulletin No. 31, Vol. 104.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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, July 23, 2019.

