

**226-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Tiferes Shebitiferes Corp., by David Smatena, owner.

SUBJECT – Application September 16, 2008 – Special Permit (§73-50) to legalize the vertical enlargement of an existing commercial building within the required 30 foot rear yard required along a residential district boundary line that is coincident with a rear lot line. C8-2 zoning district.

PREMISES AFFECTED – 172 Empire Boulevard, south side of Empire Boulevard between Bedford Avenue and Rogers Avenue, Block 1314, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #9BK**

APPEARANCES –

For Applicant: Lyra Altman.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated September 4, 2008, acting on Department of Buildings Application No. 302285569, reads in pertinent part:

“Proposed rear yard is contrary to ZR § 33-292;” and

WHEREAS, this is an application under Z.R. §§ 73-50 and 73-03, to permit, on a site in a C8-2 zoning district abutting an R5 zoning district, the legalization of an enlargement to a one-story commercial building which encroaches on a required 30-foot rear yard, contrary to Z.R. § 33-292; and

WHEREAS a public hearing was held on this application on December 16, 2008 after due notice by publication in *The City Record*, with a continued hearing on January 27, 2009, and then to decision on February 10, 2009; and

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

WHEREAS, Community Board 9, Brooklyn recommends disapproval of this application; and

WHEREAS, several residents of the community testified in opposition to this application; and

WHEREAS, the site is located on the south side of Empire Boulevard, between Rogers Avenue and Bedford Avenue; and

WHEREAS, the site has 120 feet of frontage on Empire Boulevard and a depth of 100 feet, and a total lot area of 12,000 sq. ft.; and

WHEREAS, the subject site is occupied by a one-

story commercial building housing a building supply company (the “Company”); and

WHEREAS, the existing building has a floor area of 12,000 sq. ft. and a height of 15 feet; and

WHEREAS, the existing building is built to the rear lot line; and

WHEREAS, the subject site is located within a C8-2 zoning district that abuts an R5 zoning district to its rear; and

WHEREAS, pursuant to ZR §33-292, a rear yard at curb level with a minimum depth of 30 feet is required on a zoning lot within a C-8 district with a rear lot line that abuts the rear lot line of a zoning lot in a residential district; and

WHEREAS, therefore, the existing building does not comply with ZR § 33-292; and

WHEREAS, the applicant represents that the rear yard encroachment is a legal pre-existing condition; and

WHEREAS, on June 27, 2007, Permit No. 302285569-01-AL (the “Permit”) was issued by the Department of Buildings (“DOB”), permitting a two-story vertical enlargement of the existing building; and

WHEREAS, pursuant to the Permit, the front portion of the existing building is being enlarged by two stories, to a height of 60’-0” from the front lot line extending south to a depth of 61’-5”; and

WHEREAS, the rear portion of the subject building, extending north by 38’-7” from the rear lot line (the “Rear Portion”) is enlarged to a height of 33’-4”; and

WHEREAS, on July 22, 2008, DOB issued a Stop Work Order (“SWO”) halting construction; and

WHEREAS, on November 10, 2008, DOB partially rescinded the SWO in order to allow construction to continue on the two-story enlargement to the front portion of the building; and

WHEREAS, the applicant proposes to legalize the vertical enlargement to the Rear Portion of the building to a height of 23 feet, thereby increasing the degree of non-compliance by eight feet; and

WHEREAS, under Z.R. § 73-50, the Board may grant a waiver of rear yard requirements set forth in Z.R. § 33-29 in appropriate cases; and

WHEREAS, the applicant represents that the amount of storage space in the existing building is inadequate and that the enlargement of the Rear Portion is necessary for the installation of additional storage racks; and

WHEREAS, the applicant further represents that the subject special permit is necessary to increase the capacity and operational efficiency of the Company; and

WHEREAS, the applicant states that the vertical enlargement will not increase the floor area of the Rear Portion of the building; and

WHEREAS, the applicant represents that the use

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of the Rear Portion of the building for storage will not create any fumes, odors, or other activities that would negatively impact the adjacent residential zoning district, and there will be no openings within the masonry construction that would enable noise to be heard outside the building; and

WHEREAS, the applicant further represents that strict compliance with Z.R. § 33-292 could create a disadvantage for the adjacent residential properties in that the lack of storage space would result in a greater number of pickups and deliveries to and from the site, creating noise and particulates; and

WHEREAS, the applicant states that under ZR § 33-23, the proposed enlargement would be a permitted obstruction because it does not exceed one-story or 23 feet above curb level; and

WHEREAS, the applicant further states that in C1 through C7 zoning districts, ZR § 33-292 would permit such an obstruction, and that only in C8 zoning districts is such an obstruction not permitted; and

WHEREAS, the applicant represents that the additional restriction for the C8 zoning district is due to the more noxious uses permitted in the district; and

WHEREAS, the applicant further represents that the existing and proposed use is more analogous to uses permitted in a C7 zoning district; thus, it is appropriate for such a use to exist in this rear yard so long as it is limited to one-story and does not exceed 23 feet in height, as it is compatible with the adjacent residential uses; and

WHEREAS, the Board finds that the rear yard waiver will not have an adverse affect on the surrounding area; and

WHEREAS, at hearing, the Board requested that the applicant provide information regarding the materials to be used for the façade of the Rear Portion of the building; and

WHEREAS, in response, the applicant submitted photographs of the materials to be used, which indicate that the façade will be compatible with adjacent residential buildings; and

WHEREAS, therefore the Board has determined that the application meets the requirements of Z.R. § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of Z.R. §73-

**A true copy of resolution adopted by the Board of Standards and Appeals, February 10, 2009.  
Printed in Bulletin No. 7, Vol. 94.**

**Copies Sent  
To Applicant  
Fire Com'r.  
Borough Com'r.**

03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§73-50 and 73-03.

*Therefore it is Resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings to grant a special permit under Z.R. §§ 73-50 and 73-03, to permit, on a lot within a C8-2 zoning district abutting an R5 zoning district, the legalization of the proposed enlargement of a one-story commercial building, which will encroach within the 30-foot open area required by Z.R. § 33-292, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received November 18, 2008" – (5) sheets; and *on further condition*;

THAT no mechanical equipment shall be located on the roof of the building within the 30-foot encroachment area;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 10, 2009.

**\*Revised 2/27/09**