

**24-96-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Legaga LLC, owner.

SUBJECT – Application January 23, 2018 – Extension of Term (11-411) of a previously approved variance permitting the operation of an Eating and Drinking Establishment (*McDonald's*) which expired on October 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on July 15, 2015; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, Block 271, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #3M**

**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, this is an application for a waiver of the Board’s Rules of Practice and Procedure, reopening, an extension of term to a previously granted variance, which expired on October 7, 2017, and an extension of time to obtain a certificate of occupancy, which expired on July 15, 2015; and

WHEREAS, a public hearing was held on this application on August 7, 2018, after due notice by publication in *The City Record*, with a continued hearing on October 23, 2018, and then to decision on December 4, 2018; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the north side of Madison Street, between Rutgers Street and Jefferson Street, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 26 feet of frontage, 100 feet of depth, 2,612 square feet of area and is occupied by a one-story plus cellar eating and drinking establishment (Use Group (“UG”) 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 19, 1955, when, under BSA Cal. No. 664-54-BZ, the Board granted a variance to permit, in a residence district, the construction and use of a one-story plus cellar retail store for a term of 15 years, expiring April 19, 1970, on condition that the building not be higher than proposed; that a rear yard of the depth shown be maintained at the rear; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; the use of such building and the cellar be as permitted in a local retail district; suitable fences be maintained along the lot lines at the rear and either side beyond the building; signs be restricted to such signs as would be permitted in a local retail district; and all permits required be obtained, including a certificate of occupancy and all work completed within one (1) year, by April 19, 1956; and

WHEREAS, on October 7, 1997, under the subject calendar number, the Board granted an application, pursuant to ZR § 11-411 to re-establish and extend the term of the expired variance, granted under BSA Cal. No. 664-54-BZ, which permitted a one-story retail store (UG6), on condition that all work substantially conform to drawings as they apply to the objections cited in the application; the term of the variance be limited to ten (10) years, to expire on October 7, 2007; a rear yard no less than 14’-2” in depth be provided in accordance with the BSA-approved plans, which yard will be maintained free and clear of debris and any other encroachments; the premises be maintained clean and free of graffiti; signage at the premises conform to C1 district regulations; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and a certificate of occupancy be obtained within one (1) year, by October 7, 1996; and

WHEREAS, on November 18, 2008, under the subject calendar number, the Board waived its Rules of Practice and Procedure, approved an amendment to the variance legalizing a change in use from UG 6 retail store to a UG 6 eating and drinking establishment, and granted an extension of term for a period of ten (10) years, to expire on October 7, 2017, on condition that any and all use substantially conform to drawings as they apply to the objections cited in the application; a rear yard no less than 11 feet in depth be provided in accordance with BSA-approved plans, which yard will be maintained free and clear of debris and any other encroachments; the premises be maintained clean and free of graffiti; all signage comply with C1 district regulations; the above conditions be listed on the certificate of occupancy; a certificate of occupancy be obtained by May 18, 2009; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings 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; and

WHEREAS, on July 22, 2014, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened, and granted an extension of time to obtain a certificate of occupancy, on condition that any and all use will substantially conform to drawings associated with the prior approval; the grant will expire on October 7, 2017; a rear yard no less than 11 feet in depth be provided in accordance

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with BSA-approved plan and be maintained free and clear of debris and any other encroachments; the premises be maintained clean and free of graffiti; all signage comply with C1 district regulations; the above conditions and all other relevant conditions from prior approvals will be listed on the certificate of occupancy; a certificate of occupancy be obtained by July 15, 2015; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings 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; and

WHEREAS, the term of the variance and the time to obtain a certificate of occupancy having expired, the applicant seeks an extension of the term of the variance and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant additionally requests waivers, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rules §§ 1-07.3(b)(2) and 1-07.3(d)(2) to permit the filing of this application less than two (2) years after the expiration of the term, and more than 30 days after the expiration of the time to obtain a certificate of occupancy; and

WHEREAS, the applicant represented that the use has been continuous since expiration of the term, no changes in operator, operation or structure are proposed or have occurred since expiration of the term, and the site is compliant with all prior conditions imposed by the Board, with the exception of the subject relief requested; and

WHEREAS, the applicant explained that the delay in compliance was due to an issue with a prior architect and a new professional has been retained to obtain a certificate of occupancy, and estimated that the certificate of occupancy would be obtained within six (6) months to one (1) year from the date of the grant; and

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized pursuant to the 1916 Zoning Resolution; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the presence of illegal flag signs and flag support structures on the front of the building; and

WHEREAS, in response, the applicant provided photographs to demonstrate that the flags and flag structures were removed; and

**A true copy of resolution adopted by the Board of Standards and Appeals, December 4, 2018.**

**Printed in Bulletin Nos. 49-50, Vol. 103.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

WHEREAS, by letter dated October 3, 2018, the Fire Department stated that it had no objection to this application and noted that a review of Fire Department records show that the operating permit for the rangehood system has expired, and recommends that the applicant have their client contact the Fire Department to renew the operating permit for their rangehood system; and the Fire Department will inform the Board once the permits have been updated; and

WHEREAS, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy are appropriate, subject to conditions below.

*Therefore, it is Resolved,* that the Board of Standards and Appeals, *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated October 7, 1997, as amended through July 22, 2014, so that as amended this portion of the resolution reads: "to grant an extension of the term of the variance for a term of ten (10) years, and an extension of time to obtain a certificate of occupancy; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 15, 2018"-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 7, 2027;

THAT the rear yard, which ranges in depth from 10'-10.5" to 11'-5.57", shall be maintained free and clear of debris and any other encroachments;

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

THAT all signage shall comply with C1 zoning regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

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

THAT a certificate of occupancy indicating this approval and calendar number ("BSA Cal. No. 24-96-BZ") shall be obtained within one (1) year, by December 4, 2019; 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, December 4, 2018.

