

867-55-BZ

APPLICANT – Nasir J. Khanzada, for Manny Kumar, owner; Channi Singh, lessee.

SUBJECT – Application February 1, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 19, 2011; Amendment (§11-411) to permit the conversion of service bays to an accessory convenience store and the enlargement of the building; Extension of Time to Obtain a Certificate of Occupancy which expired on February 10, 2005; Waiver of the Board's Rules. R4-1 zoning district.

PREMISES AFFECTED – 66-15 Borden Avenue, Block 2394, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

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 January 17, 2018, acting on Alteration Type I Application No. 421252717, reads in pertinent part:

“Propose to extend the term of variance for a period of 10 years past June 19, 2011, enlarge existing building in an R4-1 zoning district, which is all contrary to the resolutions and plans adopted by the Board of Standards and Appeals under Cal. #867-55-BZ and must be referred back to the BSA for approval;” and

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, an extension of term of a variance, previously granted by the Board, that expired on June 19, 2011, an extension of time to obtain a certificate of occupancy, which expired on February 10, 2005, and an amendment to permit the conversion of service bays to an accessory convenience store; and

WHEREAS, a public hearing was held on this application on January 8, 2019, after due notice by publication in *The City Record*, with continued hearings on February 26, 2019, March 26, 2019 and November 19, 2016, and then to decision on that same date; and

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

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Borden Avenue and Clinton Avenue, in an R4-1 zoning district, in Queens; and

WHEREAS, the site has approximately 236 feet of frontage along Borden Avenue, 167 feet of

frontage along Clinton Avenue, 12,627 square feet of lot area and is occupied by an existing automotive services station with accessory uses; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 19, 1956, when, under the subject calendar number, the Board granted a variance to permit the subject site to be occupied as a gasoline service station and accessory uses for a term of 15 years, expiring June 19, 1971, on condition that all building uses on the premises be removed and the site graded and constructed substantially as shown on such revised plans; the accessory building have no cellar and be located on the northerly side, designed and arranged as proposed on revised plans; its exterior be of Carrara glass except that the rear elevation may be of white brick, as shown; the interior arrangement be substantially as shown on such plans; there be erected on the easterly and northerly lot lines, retaining walls as may be necessary to support the adjoining property; on such retaining wall or along all lot lines except along the service road there be erected a woven wire fence of the chain link type on a concrete base to a total height of not less than five feet six inches; such fence return along all building lines to the service road of the Midtown Expressway; suitable terminating posts of masonry be erected at the termination of such fences; that curb cuts be restricted to four to the service road, where shown, each 30 feet in width, with no portion of any curb cut nearer than five feet to a lot line as prolonged; the number of gasoline storage tanks not exceed ten 550-gallon approved tanks; pumps be out of a low approved type, erected not nearer than 15 feet to the street building line of the expressway service road; planting be maintained at the rear of the accessory building and along the street lines of Clinton Avenue and the side lot lines to the east, as shown, properly protected with a concrete curbing not less than eight inches high and six inches wide and planting be of suitable plant material; the balance of the premises where not occupied by accessory building, pumps and planting be paved with concrete or asphalt and properly rolled and drained to provide surface drainage; the sidewalk and curbing abutting the site be reconstructed or restored to the satisfaction of the Borough President; such portable fire-fighting appliances shall be maintained as the Fire Commissioner directs; signs be restricted to permanent signs attached to the façade of the accessory building, facing the service road, and to the illuminated globes of the pumps, excluding all roof signs and temporary signs but permitting the erection within the building line of the service road toward the east of one post standard, located where shown, to support a sign which may be illuminated, advertising only the brand of gasoline on sale, and permitting such sign to extend beyond the building line for a distance of not over four feet; and, all permits required be obtained, including a certificate of occupancy and all work

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completed within one year, by June 19, 1956; and

WHEREAS, on June 18, 1957, under the subject calendar number, the Board amended the resolution to extend the time within which to obtain permits and complete the work on condition that all permits required, including a new certificate of occupancy be obtained and all work completed within one year, by June 18, 1958; and

WHEREAS, on October 5, 1971, under the subject calendar number, the Board further amended the resolution to extend the term for ten years, to expire on June 19, 1981, on condition that the planted area on the premises and the grass strips on the sidewalks be maintained in accordance with the terms and conditions of the resolution and the residential character of the neighborhood; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained; and

WHEREAS, on November 4, 1981, under the subject calendar number, the Board further amended the resolution to extend the term for ten years, to expire on June 19, 1991, on condition that the station be operated at all times in such a fashion so as to minimize traffic congestion; the grounds, planting and fences be maintained in good condition; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by November 4, 1982; and

WHEREAS, on March 10, 1992, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term for ten years, to expire on June 19, 2001, on condition that the premises conform to the revised drawings of existing conditions; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by March 10, 1993; and

WHEREAS, on February 10, 2004, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend of the term for ten years, to expire on June 19, 2011, and to permit the erection of a new metal canopy over the fuel dispensing area, the relocation of the ground sign structure to the westerly end of the lot, and to provide a new full width concrete sidewalk on the Clinton Avenue frontage, a new five-foot high, 100% closed chain-link fencing, and a new planting area, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; there be no overnight parking of vehicles of the site, with the exception of cars awaiting service; no automatic car washing occur on the premises, and all car wash modules be removed; there be no use of automatic vacuums on the site; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48

hours; landscaping be provided and maintained in accordance with BSA-approved plans; lighting be positioned down and away from any adjacent residential uses; the conditions and all conditions from prior resolutions appear on the certificate of occupancy; a certificate of occupancy be obtained within one year, by February 10, 2005; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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) and/or configuration (s) not related to the relief granted; and

WHEREAS, the term having expired June 19, 2011, and the time to obtain a certificate of occupancy having expired February 10, 2005, the applicant now seeks an extension; and

WHEREAS, because this application was filed more than two years after the expiration of term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of §§ 1-07.3(b)(3)(ii) and 1-07.3(d)(2), of the Board's Rules to permit the filing of this application; and

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized subject to a term of years pursuant to the 1916 Zoning Resolution for terms of not more than ten years each; and

WHEREAS, the applicant also seeks an amendment of the resolution to legalize the installation of two vacuum stations along the Clinton Avenue portion of the site and to enlarge and convert the existing accessory building into a convenience store, in accordance with DOB Technical Policy and Procedure Notice ("TPPN") # 10/99; and

WHEREAS, ZR § 11-412 permits the user of any building or structure to be extended or enlarged limited to 50 percent of the floor area of such building occupied by the use on December 15, 1961; and

WHEREAS, the applicant represents that the proposed enlargement of the accessory building, from 1,239 square feet of floor area to approximately 1,509 square feet of floor area, is an enlargement of less than 50 percent of the floor area occupied by the use on December 15, 1961; and

WHEREAS, TPPN # 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square

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feet or twenty-five percent (25%) of the zoning lot area, whichever is less; and

WHEREAS, the applicant submits that the proposed sales area of the accessory convenience store will be 1,509 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (3,157 square feet); and

WHEREAS, the applicant also states that a ten-ton split system condenser unit will be added to the accessory building, surrounded with a sound attenuating barrier, to accommodate the accessory convenience store, and proposes to operate the site 24 hours per day, seven days per week; and

WHEREAS, over the course of hearings, the Board raised concern with regard to the poor condition of the site and requested improvements be made to the landscaping and maintenance of the site; and

WHEREAS, in response, the applicant provided photographs demonstrating the completion of site improvements, including maintenance of the fences and walls at the site, added detail to the plans with respect to the dimensions of planting beds and protective curbing, and a site improvement plan, committing to increase the landscaping at the site and apply asphalt sealant to the lot; and

WHEREAS, by letter dated December 27, 2018, the Fire Department states that a review of their records indicates that the automotive service station is current (expires November 2021) with its Fire Department permits for the storage of combustible liquids, leak detection equipment, underground storage tank, and fire suppression (dry-chemical) system, and they have no objection to the application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term, extension of time to obtain a certificate of occupancy, and amendment are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *amend* the resolution, dated February 10, 2004, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten years, expiring November 19, 2029, extension of time to obtain a certificate of occupancy, and amendment, *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 31, 2019”- (8) sheets; and *on further condition*:

THAT all planting shown on drawings shall be installed by the end of the Fall, 2020 planting season;

THAT the asphalt shall be resurfaced;

**A true copy of resolution adopted by the Board of Standards and Appeals, November 19, 2019.
Printed in Bulletin Nos. 45-47, Vol. 104.**

Copies Sent

To Applicant
Fire Com'r.
Borough Com'r

THAT any graffiti or irregular painting shall be painted properly or removed, if brick;

THAT no oil drums or hazardous material shall be stored outside of an enclosed space;

THAT all trash shall be contained within trash enclosure;

THAT there shall be no overnight parking of vehicles of the site, with the exception of cars awaiting service;

THAT that no automatic car washing shall occur on the premises, and all car wash modules shall be removed;

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

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT landscaping shall be provided and maintained in accordance with BSA-approved plans;

THAT lighting shall be positioned down and away from any adjacent residential uses;

THAT there shall be no overnight parking of vehicles of the site, with the exception of cars awaiting service;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 867-55-BZ”), shall be obtained within four years, by November 19, 2023;

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

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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 plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 19, 2019.

