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## Community Board No. 2

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June 3, 2022

Honorable Margery Perlmutter  
Chair  
Board of Standards and Appeals  
22 Reade Street, FL 1  
New York, New York 10007

BY FIRST CLASS MAIL AND EMAIL

RE: BSA Application  
Paragon Paint Building, 45-40 Vernon Boulevard, Long Island City, NY  
Calendar Number: 233-15-BZ

Dear Chair, Perlmutter:

We are writing on behalf of Community Board No. 2 ("CB2") to express its grave concerns and strong opposition to the above application, which is currently pending before the Board of Standards and Appeals ("BSA").

Queens CB2 previously reviewed this application when it was submitted to the BSA in 2016 and in a letter dated 3/9/2016 expressed its opposition to the requested variances. The Board has now met again with the Applicant team and reviewed the revised application. While we appreciate the Applicant's efforts to address some previous comments, the Board does not agree with the developer that the current application meets the required findings for the requested variances. This overwhelming opposition was evidenced by the vote of CB2 at its full Board meeting held on June 2, 2022. The board vote followed numerous meetings and discussion with the applicant by CB2's Land Use and Housing Committee and members of its Executive Committee, as well as a public hearing held on May 5, 2022 by CB2 for the sole purpose of considering this application. In a motion to support this letter IN OPPOSITION to the Application, the vote was 34 yes, one (1) no, and one (1) abstention.

There are a number of grounds on which CB2 bases its opposition, which are more fully hereinafter detailed. They range from very specific failures of the applicant to meet each of the five (5) findings the BSA must make under Article VII, Chapter 2, Section 72-21 of the NYC Zoning Resolution ("ZR") in order to favorably entertain this application, to the very real adverse, negative impacts that the requested variance would result in for the area of CB2 that would be most directly affected by the proposed development.

As to the specific required findings to be made by BSA under ZR 72-21, the Board opposes this application for the following reasons:

*"Serving the Communities of Long Island City, Sunnyside, Woodside, and Maspeth"*

1. **INABILITY TO SUPPORT REQUIRED BSA FINDING UNDER ZR 72-21( ) THAT HARDSHIP WAS NOT CAUSED OR CREATED BY OWNER OR PREDECESSOR IN INTEREST** – The applicant has not made any argument at all in this regard, other than a very brief, unsupported statement in its filing that the hardship it claims was not created by the Applicant. It is absolutely devoid, however, of any statement or argument that the environmental conditions argued to give rise to the hardship were not created by a “predecessor in interest.” If anything, the prior 2016 application as well as mounds of environmental studies and reports they have submitted with the application actually establish that these conditions were in fact created by one or more predecessors in interest to the Applicant, and the Applicant should not be permitted to make any argument to the contrary.

The Applicant has not established, and cannot establish, by any credible proof which predecessor in interest created each such condition, when each such condition was created, and the state of the law at each such time establishing that each such condition was not illegal at the time it was created.

The Applicant has argued that the Brownfield designation of “voluntary” alters the fact that historically they or the owner or predecessor of interest created the hardship. The voluntary status, in fact, allows an expedited clean up without fines or legal action from the State. Additionally, the cleanup provides a further benefit, which are the tax credits after a certified clean up. For the purposes of BSA, the “voluntary” designation does not at all state that the hardship was not created by the applicant or predecessor of interest.

The findings that the BSA made in the few Resolutions that the applicant references completely disregard prior owners before the Brownfield designation, which undercuts any argument that their voluntary action should be determinative on this issue. Moreover, the statements in some of those resolutions that some of these conditions arose before environmental regulations required any action by the owners is not suitable to the current circumstances and is inapposite. Whether or not the prior owners' action or inaction was illegal at the time, or subject to environmental regulations or not at the time, is irrelevant to the black letter of BSA's regulation that the predecessor caused the contamination. It is not a bad conduct requirement, just a factual one that the applicant's own papers admit. It would be arbitrary and capricious to accept the Applicant's argument.

Under these circumstances, CB2 submits that BSA cannot make this required finding and that, on this basis alone, the application must be denied.

2. **INABILITY TO SUPPORT REQUIRED BSA FINDING UNDER ZR 72-21(c) THAT THE PROJECT WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD OR DISTRICT IN WHICH IT IS LOCATED** – The Applicant is not basing its arguments regarding the impact on the neighborhood character on the actual neighborhood as it currently exists but rather on their vision of the future, with development on adjacent waterfront sites that is not permitted within the M1-4 zone. The developer's renderings are speculative and envision a future with taller buildings surrounding their site that do not exist. Additionally, the Application does not consider the industrial base in the surrounding areas to the North and East of the site, or the M1-4/R6A, R6B low-rise character of the adjacent Vernon Boulevard corridor to the East and South (known as the Hunters Point Subdistrict of the LIC Special District.) The majority of surrounding buildings for several blocks are of one and two-story height, but the Applicant's analysis only uses the large, high density and high bulk Queens West buildings as the main point of reference. The Applicant's argument for meeting this finding



is based on a non-existent and speculative future. The actual zoning that does exist in proximity to the proposed project is M1-4.

- The Applicant frame of reference is misleading. This site is adjacent to the Hunters Point Subdistrict of the LIC Special District which is a community of homeowners and renters, small businesses, local retail and public institutions, with many buildings dating from the late nineteenth and early twentieth century. When the existing zoning was adopted, DCP sought to preserve the existing urban fabric and mixed use/ mixed income character of the surrounding blocks with fixed height limits that protect light and air along with views for the existing community. The Queens West waterfront referred to in the application is also close to this site, however, using Queens West, a complex master planned community with enormous public benefits as a frame of reference to justify the variances requested, which contribute barely more than required DCP waterfront access is misleading at best. Consideration of the variance requests for this project is presumptuous and approval of a variance to allow a 23-story residential building in an M1-4 zone is out of context and destructive to the existing community character.
- The project will put further strain on an already failing infrastructure. The NYC Economic Development Corporation in 2019 pledged to invest \$180 million in new City funding in seven key areas, including infrastructure, to ensure that the growth in LIC was sustainable and inclusive. So far, the majority of these funds have failed to materialize. The approval by the BSA of the variances requested will vastly impact an already failing infrastructure, increase the likelihood of area wide flooding, place deep economic pressure on local business and contribute to further real estate speculation and increase rents for residential tenants. The historic mixed-use and mixed-income character of this neighborhood will be permanently altered.
- In their current application, the design treatment of the Paragon building is a caricature of the authentic industrial base. The applicant has redesigned the facade treatment of the street level Paragon building with a design aesthetic that references its industrial use but in fact only serves to accentuate the vulgarity of the design by becoming a caricature of the M1-4 zone while at the same time the project is destroying it. This amended design amplifies the extent to which the proposed project would alter the low-rise, mixed-use, and mixed-income character of the immediately surrounding blocks.
- The strategy of obtaining these BSA variances as a way to essentially spot zone an area is not a substitute for a larger neighborhood-wide rezoning and resiliency plan. The proposed new construction, on a site within the 100-year flood plain, will exacerbate the problems of an already overloaded storm and wastewater infrastructure serving the neighborhood.
- Queens CB2 notes that further evidence of Quadrum's long term intention to drastically alter the essential character of the neighborhood can be found on their current website at <https://www.quadrumglobal.com/portfolio/vernon-paragon-long-island-city-new-york>, where it is stated that "Quadrum and its development partners are seeking to obtain a change of use from manufacturing to residential as well as to significantly upzone adjacent sites which would include three future residential buildings...".
- Queens CB2 fully understands the city's urgent need for new housing and supports increased residential density when developed in concert with necessary infrastructure, especially when that housing contributes to meeting the diverse needs of the city's residents. However; in the absence of a wider planning and rezoning process, this application for BSA

variances does not meet the required finding under ZR 72-21(c) and would unquestionably alter many critical aspects of the existing neighborhood character.

**CB2 submits that such a selective, incomplete, and misleading analysis cannot support this required finding by BSA.**

- 3. INABILITY TO SUPPORT REQUIRED BSA FINDING UNDER ZR 72-21(b) THAT THE CLAIMED HARDSHIP WILL NOT PERMIT THE APPLICANT A REASONABLE RETURN** – CB2 also rejects the Applicant's analysis, and calculations, as to how, and to what extent, this is a financial hardship. Their numbers do not adequately explain what their anticipated long-term return on investment is. The owner is a sophisticated global investment company with projects throughout the world. They would not have purchased this property if there was not the potential for a high return.

According to the NYC Zoning Handbook, variances are "to grant relief from provisions of the Zoning Resolution to the minimum extent necessary." They are intended to be the least intrusive, most in keeping with the existing community viable option. It is CB2's position that it is impossible to rationally or objectively make any finding that there is any ultimate financial hardship to the Applicant, or that it cannot realize a reasonable return given the information that we have received. Additionally, the financial feasibility analysis is posed as two options, i.e. the as of right and the proposed, so there is a proportionality question. If you accept the argument that the as-of-right project is "not feasible" CB2 asserts that the project does not warrant the number and size of the variances requested - a major use variance, plus height, setback, floorplate variances.

- The feasibility of this development is predicated on the extension of the 421A tax abatement, which is currently under review. Since both the market scenario and the office scenario were deemed not feasible, there is no other feasible option presented, such as a market rate condominium, which was not reviewed or considered in this proposal.
- The applicant's projection of the tax credit benefits may be too conservative. Without the resources to hire an experienced consultant to analyze the Applicant's Brownfield Tax Credit assumptions, we are handicapped to opine on this matter, however, we question the applicant's rationale for discounting the Brownfield Credit return. The credits are discounted at 35%. If the project doesn't happen they will receive no tangible tax credit, however if the project proceeds it will receive the estimated tax credit in the future so it may be that 35% is too conservative.

**Under these circumstances, CB2 submits that the Applicant has not sufficiently met its burden to enable BSA to make this required finding, and that the application must be denied for this reason as well.**

- 4. INABILITY TO SUPPORT REQUIRED BSA FINDING UNDER ZR 72-21(d) THAT THE SITE HAS A UNIQUE PHYSICAL CONDITION** – The Applicant is claiming that their parcel is unique and therefore, in need of BSA consideration for zoning exceptions. CB2 asserts that this is no more than a typical challenging development site and their uniqueness argument is spurious. The Applicant has not shown that the conditions on this brownfield site are more severe than those at numerous other severely contaminated sites throughout the five boroughs which

have been developed in recent years without variances.

As to the additional grounds on which CB2 opposes this application:

5. **INFRASTRUCTURE AND CITY SERVICE IMPROVEMENTS** – The exponential growth and development in Hunters Point, LIC, and Western Queens has already placed tremendous pressure on existing city services, including schools, transportation, health care, and other community facilities, parking, and physical infrastructure. Permitting added density contrary to the zoning via a BSA variance, without delivery of, or effective planning for, contemporaneous provision of necessary infrastructure improvements and essential city services subverts the existing zoning process. It is analogous to “spot” zoning, which is the very antithesis of the comprehensive planned zoning that is called for in this very special and unique waterfront area, particularly where there are such substantial potential impacts as this variance would have. If this applicant is denied a variance from the BSA, they may still pursue zoning changes via the Uniform Land Use Review Process (ULURP), where all these issues may be considered.
6. **NEGATIVE IMPACT ON NEIGHBORHOOD** – The height and bulk of the project references the Queens West waterfront development in supporting the Applicant’s height and density arguments. However, the project is not characteristic of the surrounding neighborhood, and disregards the long-standing and carefully Planned Hunters Point Sub district zoning that was intended to preserve and maintain the low-rise character of the adjacent Vernon Boulevard corridor. A mere 50-foot setback, as proposed in the Application, does little, if anything, to substantially mitigate the impact of a 262 foot high building on Vernon Boulevard.
7. **NOT PART OF AN OVERALL WATERFRONT DEVELOPMENT PLAN** – Approving this development without thorough consideration of the impact of further residential development in the M1-4, Anable Basin and the northern Hunters Point zone is unwise and presumptuous. It will likely lead to speculation and displacement of local businesses currently housed in the M1-4 zone, and ersatz and uncoordinated development in and around this precious waterfront area. It would be most desirable for an entire future public walkway adjacent to Anable Basin to be part of a coordinated design, reviewed and approved by the city at one time.
8. **NO FIRM COMMITMENT TO INCLUSION OF COMMUNITY FACILITY SPACE OR DEFINED AFFORDABLE HOUSING COMPONENT** – The application indicates that the Applicant will provide 30% affordable housing at 130% AMI (68 of 226 units) but only if the requisite 421A tax abatement is available. This is, currently, an empty promise since the 421A tax abatement has expired. Permitting a BSA variance for increased height and density without the required provision of affordable housing that would allow for continued economic diversity as opposed to wholesale gentrification is out of character with the economic profile of the Community Board district. Given the population and economic makeup of this community, our failure to provide for economic diversity on the waterfront is unconscionable.

In summary, while CB2 acknowledges the benefit of the remediation of a contaminated site in its district and the addition of the DCP required waterfront green space, CB2 requests that this application be denied by the BSA for all of the reasons stated above, and submits that the Applicant’s failure and inability to meet its burden sufficiently to enable the BSA to make each of the findings required by ZR 72-12 compels that denial.

The height and density of this proposed development given the current zoning of the site, its dramatic contrast with the existing context and character of the adjacent Vernon Boulevard corridor and the magnitude of the requested variance based on an insufficient provisional affordable housing gesture,




combined with the Applicant's unsubstantiated argument that the claimed hardship was not caused or created by a predecessor in interest appears simply like a wolf in sheep's clothing. If left unchecked, and permitted to proceed with the requested variances, the proposed project will result in chaotic development and a speculative market, which will impose a hardship on the community.

We will be happy to supplement the foregoing comments and address any questions you or any of the BSA Commissioners may have. Please let us know, and we will promptly provide any such additional information.


Thank you for your consideration of CB2's position in strong opposition to this application.

Respectfully submitted,

COMMUNITY BOARD NO. 2

By:   
MORRY W. GALONoy  
Chairperson, Queens CB2

By:   
DEBRA MARKELL KLEINERT  
District Manager Queens CB2

By:   
LISA DELLER  
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By:   
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cc: Shampa Chanda, Commissioner, BSA  
Dara Ottley-Brown, Commissioner,  
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Honorable Joseph Addabbo Jr, NY State Senate  
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Honorable Jessica Gonzalez-Rojas, NYS Assembly  
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Honorable Robert Holden, NYC Council Member

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