

**289-14-BZ**

**CEQR #15-BSA-103Q**

APPLICANT – Sheldon Lobel, P.C., 22-32 31st Street LLC, owner.

SUBJECT – Application November 6, 2015 – Special Permit (§73-42) to extend the conforming Use Group 6 restaurant use located partially within a C4-2A zoning district into the adjacent R5B zoning district.

PREMISES AFFECTED – 22-32/36 31st Street, located on the west side of 31st Street. Block 844, Lot 49, 119, 149. Borough of Queens.

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

**THE VOTE TO GRANT –**

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 19, 2014, acting on DOB Application No. 420949978, reads in pertinent part:

Proposed outdoor dining area requires BSA approval; and

WHEREAS, this is an application under ZR §§ 73-42 and 73-03, to permit the extension of an existing eating and drinking establishment (Use Group 6) within a C4-2A zoning district into the adjacent R5B zoning district, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on March 3, 2015, after due notice by publication in *The City Record*, with a continued hearing on April 14, 2015, and then to decision on May 19, 2015; and

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

WHEREAS, Community Board 1, Queens, recommends approval of this application, subject to the following conditions: (1) that the use be limited to a term of five years; (2) that outdoor use not exceed 18 tables and 74 seats; (3) that outdoor use be prohibited during the winter; (4) that noise attenuation be provided and (5) that future applications be filed in a timely manner; and

WHEREAS, the subject site the site is an irregular parcel comprised of Tax Lots 49, 149, and 119; it has frontages along 29th Street (9.75 feet) and 31st Street (75 feet) between 23rd Avenue and Ditmars Boulevard and is located partially within a C2-4A zoning district and partially within an R5B zoning district; and

WHEREAS, the site has 17,165 sq. ft. of lot area, with 11,065 sq. ft. of lot area in the C2-4A portion of the site and 6,100 sq. ft. of lot area in the R5B portion of the site; and

WHEREAS the site is occupied by a one-story

building with approximately 11,065 sq. ft. of floor area (0.64 FAR); the applicant represents that the building is entirely within the C2-4A portion of the site; the remainder of the site is used for accessory outdoor dining; and

WHEREAS, the site has been subject to the Board’s jurisdiction since 1969, when, under BSA Cal. No. 941-68-A, the Board granted an application permitting a non-automatic sprinkler system in the cellar, contrary to the Fire Department’s requirement for an automatic sprinkler system; and

WHEREAS, subsequently, on February 15, 2011, the Board, under BSA Cal. No. 29-10-BZ, granted a special permit pursuant ZR § 73-52, to permit, on a site partially within a C1-2 (R5) zoning district and partially within an R5 zoning district, the extension of the C1-2 district regulations 25 feet into the R5 portion of the site to allow outdoor dining accessory to the existing eating and drinking establishment (Use Group 6), contrary to ZR § 22-00; the Board included a term on the special permit—three years—to expire on February 15, 2014; and

WHEREAS, the Board observes that the 2011 grant was in error, in that, on March 25, 2010, the Astoria Rezoning became effective, which rezoned the site from C1-2 (R5)/R5 to its current C2-4A/R5B; further, whereas as the prior C1-2 portion of the site extended to a depth of 150 feet from 31st Street, the C2-4 portion only extends to a depth of 125 feet from 31st Street; and

WHEREAS, the applicant represents that extending the district boundary for the C2-4A district 25 feet into the R5B portion of the site pursuant to ZR § 73-52 would not create enough outdoor accessory dining space for the eating and drinking establishment; and

WHEREAS, accordingly, the applicant now seeks a special permit pursuant to ZR § 73-42 to extend the Use Group 6 use across the zoning district boundary line between the C2-4A zoning district and the R5B zoning district, for a depth of 47.5 feet, which will allow outdoor accessory dining in the R5B portion of the site; and

WHEREAS, pursuant to ZR § 73-42, the Board may permit the expansion of a conforming use into a district where such use is not permitted, provided that (1) the enlarged use is contained within a single block; (2) the expansion of either the depth or the width of the conforming use is no greater than 50 percent of either the depth or width of that portion of the zoning lot located in the district where such use is a conforming use; and that (3) the area of the expansion cannot exceed 50 percent of the area of the zoning lot located in the district where such use is a conforming use, and provided further that the required findings are made; and

WHEREAS, the findings are as follows: (a) there is no reasonable possibility of expanding the use within the

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existing district where it is conforming; (b) the conforming use existed prior to January 6, 1965, or the date of any applicable subsequent amendment to the zoning maps; and (c) the expanded use is not so situated or of such character or size as to impair the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold condition that the use is contained on a single block, the applicant states that the existing establishment and the proposed enlarged accessory outdoor dining area are contained within Block 844; and

WHEREAS, the applicant also states that the portion of the site occupied by the existing conforming use is 75 feet wide by 125 feet deep, with a lot area of 9,375 sq. ft., and the expansion area (within the R5B portion of the site) is 22.5 feet wide by 75 feet deep, with a lot area of 1,687.5 sq. ft. of floor area; as such, the expansion area is less than 50 percent of the width, depth and lot area within the C2-4A zoning district; and

WHEREAS, accordingly, the Board finds that the use and proposed expansion site are located within the same block and that the expansion does not exceed size restrictions; and

WHEREAS, as to the finding under ZR § 73-42(a), the applicant represents that there is not any reasonable possibility of expanding the use within the existing C2-4A zoning district because the use already occupies all portions of the C2-4A portion of the site and the adjacent buildings are occupied by other business; hence, the use cannot extend east or west within the commercial district; and

WHEREAS, as to the finding under ZR § 73-42(b), the applicant represents that the Use Group 6 use was in existence prior to the Astoria Rezoning on March 25, 2010; and

WHEREAS, in support of this assertion, the applicant submitted a Certificate of Occupancy from 1970, which references Tax Lots 49, 149, and 119 and authorizes a Use Group 6 use within the building at the site; and

WHEREAS, as to the finding under ZR § 73-42(c), the applicant asserts that the proposed use is not situated or of such character or size as to impair the essential character or future use of the surrounding area; and

WHEREAS, specifically, the applicant states that the Board recognized the commercial character of the area in its 2011 grant and the applicant notes that it will include the following buffering measures to protect adjacent residential uses: (1) a solid fence with a height of seven feet and sound attenuation construction; (2) landscaping along the perimeter of the outdoor area; (3) a retractable awning capable of entirely covering the dining area; (4) limited hours (Sunday through

Thursday, from 11:00 a.m. to 10:00 p.m., and Friday and Saturday, from 11:00 a.m. to 11:00 p.m.) and seasonal use (spring through fall); (5) lighting directed down and away from residential uses; (6) enforcing a strict no smoking policy; and (7) prohibiting outdoor music; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information on the sound attenuation measures; and

WHEREAS, in response, the applicant provided detailed specifications on the proposed materials for the sound attenuation construction and included such specifications on the proposed plans; and

WHEREAS, finally, the applicant represents and the Board agrees that the proposal complies with the bulk requirements of ZR § 73-42; and

WHEREAS, based on the foregoing, the Board finds that the proposed expansion of the Use Group 6 use from the C2-4A zoning district into the R5B zoning district will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the proposed action will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-42 and 73-03; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR Part 617.4 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 15-BSA-103Q, dated October 29, 2014; and

WHEREAS, the EAS documents that the operation of the bank would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the

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environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*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 §§ 73-52 and 73-03, to permit the extension of an existing eating and drinking establishment (Use Group 6) within a C4-2A zoning district into the adjacent R5B zoning district, contrary to ZR § 22-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 22, 2015" – (7) sheets; and *on further condition*:

THAT the term of the grant shall be limited to five years, to expire on May 19, 2020;

THAT arrangement and permitted occupant load of the outdoor area shall be as reviewed and approved by DOB;

THAT landscaping and trees shall be installed and maintained in accordance with the BSA-approved plans;

THAT the hours of operation for the outdoor dining area shall be limited to Sunday through Thursday, from 11:00 a.m. to 10:00 p.m.; and Friday and Saturday, from 11:00 a.m. to 11:00 p.m.;

THAT the outdoor dining area shall be closed during winter;

THAT all lighting shall be directed down and away from adjacent residential uses;

THAT there shall be no outdoor music at the site;

THAT there shall be no smoking permitted in the outdoor dining area;

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

THAT a certificate of occupancy shall be obtained by May 19, 2019;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered

approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the 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.

Adopted by the Board of Standards and Appeals, May 19, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 19, 2015.**  
**Printed in Bulletin No. 22, Vol. 100.**

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

