



*Melinda Katz*  
Queens Borough President

## Community Board No. 2

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*Patrick A. O'Brien*  
Chairman  
*Debra Markell Kleinert*  
District Manager

March 9, 2016

Corrected and Amended Copy

Honorable Margery Perlmutter  
Chairperson  
Board of Standards and Appeals  
250 Broadway, 29<sup>th</sup> Floor  
New York, New York 10007

BY FIRST CLASS MAIL and e-MAIL

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").

This overwhelming opposition was evidenced by the vote of CB2 at its full Board meeting held on February 4, 2016, which followed numerous meetings and discussion with the applicant by CB2's Land Use Committee and members of its Executive Committee as well as a public hearing scheduled by CB2 for the sole purpose of considering this application, which was held on January 20, 2016. At that February 4, 2016 meeting, with a quorum present, a motion was made and seconded to oppose this application. The vote was 24 in favor with 4 opposed and 2 abstentions.

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 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:

1. **INABILITY TO SUPPORT REQUIRED BSA FINDING UNDER ZR 72-21(d) 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 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.

Counsel for the applicant has suggested to CB2, but nowhere in its application to BSA, that the BSA has previously made such findings in other variance applications where the conditions created by a predecessor in interest were not illegal at the time they were created. However, any such suggestion, or BSA finding (if any such were ever made), are directly contrary to the black letter requirement of ZR 72-21 in this regard. Moreover, inasmuch as there were literally hundreds of types of hazardous material identified in the voluminous environmental reports they submitted to BSA, which were both in the ground and held above ground in numerous tanks or vessels, 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.

**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 as to the impact on the neighborhood on the actual neighborhood, but what they want to define it as.

They do not take into account the industrial base in the surrounding area to the North or East of their site, or the low-rise character of the adjacent Vernon Boulevard area to the East and South of their site (which area includes many one and two story non-multiple dwellings), but only use the large, high density and bulk Queens West buildings to the West as the main point of reference in their analysis of why their development would not have a negative impact and alter the essential character of the actual neighborhood where they are located.

**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 (at least to CB2) what their anticipated long term return on investment is, or what the additional benefits they will receive from such subsidies as

421-a and Brownfields credits could be. Without such figures, 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.

**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.**

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

- 4. EXCESSIVE DEVELOPMENT IN LIC/HUNTERS POINT/ CB2 WITHOUT SIMULTANEOUS ESSENTIAL 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 existing 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 and 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.
- 5. NEGATIVE IMPACT ON NEIGHBORHOOD** - The excessive 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 300 foot building on Vernon Boulevard.
- 6. NOT PART OF AN OVERALL WATERFRONT DEVELOPMENT PLAN** - Other future waterfront developments in the area will have to account for this development in their waterfront plan and 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.
- 7. NO FIRM COMMITMENT TO INCLUSION OF COMMUNITY FACILITY SPACE OR DEFINED AFFORDABLE HOUSING COMPONENT** – The application indicates that the Applicant will provide a 20% affordable housing component, and in a subsequent letter to CB2 from its land use attorney, Howard Goldman, indicated the Applica would provide 30% affordable housing component 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.

8. **NEGATIVE PRECEDENT** - It will likely set a precedent (if not legal precedent) for other developments in close proximity that are definitely going to follow in the very near future, including a very large NYC-owned site on 44<sup>th</sup> Drive in Long Island City that is in close proximity to the Applicant's site which EDC has recently released an RFP for the development of.

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

The excessive 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, its 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 such a variance, it will result in the overdevelopment of an already overdeveloped area, and the imposition of market rate residential development contrary to the existing M1-4 zoning that is out of character with the existing zoning and the surrounding neighborhood.

We will be happy to supplement the foregoing, and address any questions you or any of the BSA Commissioner may have regarding any aspect of it. 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: 

PATRICK A. O'BRIEN, Chairperson, CB2

By: 

LISA DELLER, Chairperson,  
CB2 Land Use Committee

By: 

DEBRA MARKELL-KLEINERT, CB2,  
District Manager

cc: Honorable Joseph Crowley, US Congress  
Honorable Carolyn B. Maloney, US Congress  
Honorable Grace Meng, US Congress  
Honorable Nydia M. Velazquez, US Congress  
Honorable Michael Gianaris, NY State Senate  
Honorable Michael DenDekker, NYS Assembly  
Honorable Margaret Markey, NYS Assembly  
Honorable Catherine T. Nolan, NYS Assembly  
Honorable Elizabeth Crowley, NYC Council Member  
Honorable Jimmy Van Bramer NYC Council Member, Majority Leader  
Honorable Daniel Dromm, NYC Council Member  
Honorable Melinda Katz, Queens Borough President of the Borough of Queens  
Honorable Melva Miller, Deputy Borough President  
Irving Poy, Queens Borough President's Office  
Yoni Bokser, Queens Borough President's Office  
Susan M. Hinkson, Vice-Chair, BSA  
Eileen Montanez, Commissioner, BSA  
Dara Ottley-Brown, Commissioner, BSA  
Shampa Chanda, Commissioner, BSA  
Ryan Singer, Executive Director, BSA  
Howard Goldman, Esq.  
Brent Carrier/CSC 4540 Property Co LLC  
Sean Crowley, Davidoff, Hutcher, Citron, LLP