

**ERIC PALATNIK, P.C.**

ATTORNEY AT LAW  
32 BROADWAY, SUITE 1811  
NEW YORK, NEW YORK 10004

(212) 425-4343  
FAX (212) 968-7129  
E-MAIL [ERIC@ERICPALATNIKPC.COM](mailto:ERIC@ERICPALATNIKPC.COM)

February 11, 2025

**STATEMENT OF FACTS AND FINDINGS**

**Premises:** 3540 Nostrand Avenue  
Block 7386 – Lots 114 & 117  
Brooklyn, New York

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**INTRODUCTION**

This application seeks a special permit, pursuant to §§ 73-03 and 73-311 of the New York City Zoning Resolution (“Zoning Resolution” or “ZR”), to permit, on a site within a R4/C1-2 zoning district, the operation of an accessory drive-through facility operating in conjunction with an as of right eating and drinking establishment (Use Group VI).

**SITE HISTORY AND INFORMATION**

The Premises is located at 3454 Nostrand Avenue in the Borough of Brooklyn and is identified on the New York City Tax Map as Block 7386 Lots 114 & 117. The property is located on the west side of Nostrand Avenue, between Avenue V and Avenue W in Brooklyn Community Board 15. The Premises the site has approximately 200 feet of frontage along Nostrand Avenue, and approximately 21,000 sq. ft. of lot area.

The one story eating and drinking the site is occupied by a one-story eating and drinking establishment (Use Group VI, operated as a McDonald’s franchise) with 3,109 sq. ft. of floor area (0.15 FAR), an accessory drive-through, and 25 accessory parking spaces.

The existing accessory drive-through was granted pursuant to a special permit issued by the Board on March 13, 1988, under BSA Cal. No. **1217-88-BZ**, the term of which was extended on October 12, 1999 and expired on **March 13, 2005**.

On **March 24, 2015** under calendar number **28-14-BZ**, the Board granted a new special permit application to permit the operation of an accessory drive-through facility in connection with an as-of-right (Use Group 6) eating and drinking establishment for a term of five years to expire on **March 24, 2025**; on condition that:

**ERIC PALATNIK, P.C.**

Condition	Compliance
THAT term of the grant expire on March 24, 2025	Yes
THAT the operator of the restaurant shall remove or cause to be removed the trash from the site no fewer than six (6) times per week	Yes
THAT the fencing at the subject site shall be well maintained and kept in good appearance	Yes
THAT the operator of the restaurant shall cause extermination services to be performed at the site on a bimonthly (twice a month) basis;	Yes
THAT the operator of the restaurant shall maintain the volume of its outdoor soundboard menu so as not to disturb residential neighbors;	Yes
THAT parking and queuing space for the drive through will be provided as indicated on the BSA approved plans	Yes
THAT all landscaping and/or buffering will be maintained as indicated on the BSA-approved plans	Yes
THAT the planting shown on the Board approved plans shall consist of perennials and shall be well maintained;	Yes
THAT all signage will conform to C1-2 zoning district regulations;	No, correcting signage
THAT the above conditions will appear on the certificate of occupancy	Yes

Now the application seeks a 10-year extension pursuant to the new ZR 73-311 special permit for drive-throughs.

**THE INSTANT APPLICATION**

The instant application seeks a new ZR Section 73-311 special permit for an accessory drive-through facility operating in conjunction with an as of right eating and drinking establishment (Use Group VI) within a R4/C1-2 zoning district.

Accordingly, an application was filed with the Department of Buildings (“DOB”) under Job # 322118230, the application was denied by the Department of Buildings on January 13, 2025 for an appeal to the BSA. The objection reads:

***“Proposed reinstatement of an existing Use Group IV eating and drinking establishment with accessory drive thru, in a R4/C1-2 zoning district requires a special permit pursuant to ZR section 73-311 and must be referred back to the Board of Standards and Appeals”***

**ERIC PALATNIK, P.C.**

ZR §73-03 empowers your Board to grant the special permit provided the circumstances are met. We submit that the findings of ZR §73-311 and ZR §73-03 are satisfied and request that the application be granted in all regards.

The character of the commercially zoned street frontage within 500 feet of the subject premises remains commercial and orientated toward motor vehicle uses. The drive-through facility has not had an undue adverse impact on residences within the immediate vicinity, and adequate buffering between the drive-through facility and adjacent residential uses is in place.

As indicated on the site plan, submitted with this application, visual screening and sound attenuation is provided at the site in that a six-foot-high opaque chain link fence along the western property line and along the southern property line past the existing adjacent commercial building wall. Dense plantings measuring at least four feet wide and four feet high along the north and south portions of the property. Moreover, setbacks separating the adjacent residences from the drive-through facility provide further buffering.

As shown on plan drawing BSA-011.00, the drive-thru sound levels comply with the noise code in terms of decibel limits. As indicated thereon, the decibel level of the menu board when measured from the average residence boundary, is 40 dba.

All exterior lighting has been installed to be directed away from the adjoining residences. Signage at the site will be compliant with C1 signage regulations.

**ZR SECTION 73-03**

Section 73-03 of the Zoning Resolution provides that:

*The Board of Standards and Appeals shall have the power, as authorized by Section 73-01, paragraph (a) or (b), and subject to such appropriate conditions and safeguards as the Board shall prescribe, to grant special permit uses or modifications of use, parking, or bulk regulations as specifically provided in this Chapter, provided in each case:*

*(a) The Board shall make all of the findings required in the applicable sections of this Chapter with respect to each such special permit use or modification of use, parking or bulk regulations and shall find that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use or modification of use, parking or bulk regulations at the particular site are outweighed by the advantages to be derived by*

## **ERIC PALATNIK, P.C.**

*the community by the grant of such special permit. In each case the Board shall determine that the adverse effect, if any, on the privacy, quiet, light and air in the neighborhood of such special permit use or modification of use, parking or bulk regulations will be minimized by appropriate conditions governing location of the site, design and method of operation.*

*(b) In all cases the Board shall deny a special permit whenever such proposed special permit use or modification of use, parking or bulk regulations will interfere with any public improvement project (including housing, highways, public buildings or facilities, redevelopment or renewal projects, or right-of-way for sewers, transit or other public facilities) which is approved by or pending before the Board of Estimate, Site Selection Board or the City Planning Commission as determined from the calendars of each such agency issued prior to the date of the public hearings before the Board of Standards and Appeals.*

*(c) When under the applicable findings the Board is required to determine whether the special permit use or modification of use, parking or bulk regulations is appropriately located in relation to the street system, the Board shall in its discretion make such determination on the basis of the Master Plan of Arterial Highways and Major Streets on the official City Map. Whenever the Board is required to make a finding on the location of a proposed special permit use or modification of use, parking or bulk regulations in relation to secondary or local streets and such classification of streets is not shown on the Master Plan, the Board in its discretion shall request the City Planning Commission to establish a report on the appropriate classification of such street.*

*(d) For applications relating to Sections 73-311 (Drive-through facilities), 73-47 (Exceptions to Maximum Size of Accessory Group Parking Facilities), and 73-48 (Roof Parking), the Board in its discretion shall request from the Department of Transportation a report with respect to the anticipated traffic congestion resulting from such special permit use or modification of use, parking or bulk regulations in the proposed location. If such a report is requested, the Board shall in its decision or determination give due consideration to such report and further shall have the power to substantiate the appropriate finding solely on the basis of the report*

**ERIC PALATNIK, P.C.**

*of the Department of Transportation with respect to the issue referred.*

*(e) The following shall apply regarding terms of years for special permits:*

*(1) For special permit #uses# issued by the Board of Standards and Appeals prior to June 6, 2024, such permit may continue pursuant to the term established at the time such permit was granted, as applicable.*

*For special permit #uses# granted after June 6, 2024, the Board may issue permits not to exceed 10 years. For a #use# where a special permit has previously been granted, the term may exceed 10 years at the discretion of the Board.*

*(2) For other special permits, if a term of years is specified in the applicable section, the Board shall establish a term of years not to exceed such maximum. For those special permit involving a modification of use, parking or #bulk# regulations for which a maximum term has not been specified, the Board may fix an appropriate term for any such special permit.*

*(f) Any violation of the terms of a special permit may be ground for its revocation.*

*(g) On application for renewal of any such special permit authorized in this Chapter, the Board shall determine whether the circumstances warranting the original grant still obtain. In addition, the Board shall ascertain whether the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term. In the event that the Board shall find the applicant has been in substantial violation thereof, it shall deny the application for renewal.*

*(h) The Board may permit the enlargement or extension of any existing use, which, if new, would be permitted by special permit in the specified districts under the provisions of Section 73-01 and other applicable provisions of this Chapter, provided that before granting any such permit for enlargement or extension within the*

**ERIC PALATNIK, P.C.**

*permitted districts, the Board shall make all of the required findings applicable to the special permit use, except that:*

- (1) in the case of colleges or universities in R1 or R2 Districts, the Board may waive all such required findings set forth in Section 73-132 (Colleges and universities); and*
- (2) in the case of public utility uses, the Board may waive all such required findings set forth in Sections 73-14 (Public Service Facilities and Infrastructure), inclusive.*

*No such enlargement or extension shall create a new noncompliance or increase the existing degree of non-compliance with the applicable bulk regulations, except as may be permitted in accordance with the provisions of Sections 73-62 to 73-68, inclusive, relating to Modification of Bulk Regulations.*

We respectfully submit that this application meets ZR §73-03's required findings:

- (a) There are no foreseeable hazards or disadvantages to the community, and no foreseeable adverse effects on privacy, quiet, light and air in the neighborhood of such special permit use. No modification of the parking or bulk regulations is required or requested, and the applicant will agree to any appropriate conditions with regard to the design and method of operation of the facility.

The fact that a drive-through facility has operated at this Premises without complaints since 1990 when the Board granted the original special permit, is evidence that it does not have an adverse impact on residences in the surrounding area. The eating and drinking establishment with accessory drive-through facilities will continue to be an asset to the surrounding area, providing a desirable use to the local community.

- (b) The subject McDonald's drive-through will not interfere with any public improvement projects.
- (c) Section 73-311 requires the Board to make a finding with respect to minimal interference with traffic flow. It is not anticipated the drive-through facility will have any negative impact on the surrounding streets. As shown on the site plan drawing BSA 001.00, the accessory drive-through facility will have a 10-car reservoir space available to vehicles awaiting service from the eating and drinking establishment and 25 on-site accessory parking spaces.

**ERIC PALATNIK, P.C.**

- (d) For an application, pursuant to ZR § 73-311 the Board in its discretion may request from the Department of Transportation a report with respect to the anticipated traffic congestion resulting from the accessory drive-through facility in the location. It is anticipated that the Board will not need to make such a request as the drive-through facility has operated since 1988 and seeks no amendments. The layout provides several entrances and exits from the facility, thereby allowing customers to proceed in accordance with the traffic and congestion patterns in the area.
- (e) Section 73-311 provides for a maximum term of ten years, and a ten-year term is sought in the instant application.
- (f) ZR §73-03 (f) is inapplicable.
- (g) ZR §73-03 (g) is inapplicable.

**ZR SECTION 73-311**

Section 73-311 of the Zoning Resolution permits eating and drinking establishments with accessory drive-through facilities provided that the below findings are made:

*In C1 through C7 Districts, the Board of Standards and Appeals may permit modification to the applicable enclosure regulations to allow #accessory# drive-through facilities serving a #use# listed in Use Group 6, as set forth in Section 32-16 (Use Group6- Retail and Services), for a term not to exceed 10 years, provided that the following findings are met:*

- (a) *the drive-through facility contains reservoir space within the zoning lot,:*
  - (1) *for not less than 10 automobiles where serving an eating or drinking establishment; or*
  - (2) *at a sufficient capacity for waiting automobiles , at maximum expected operation, where serving all other uses;*
- (b) *the drive-through facility will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow.*
- (c) *the character of the Commercial District street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing uses contained within such area and to the subject use;*
- (d) *the drive-through facility shall not have an undue adverse impact on residences within the immediate vicinity of the subject premises. In order to make such finding the Board shall consider both the air quality impact of idling vehicles and the illumination from headlights on adjacent residential uses; and*

## **ERIC PALATNIK, P.C.**

*(e) there will be adequate buffering between the drive-through facility and adjacent residential uses. Screening shall consist of densely planted vegetation and may additionally include walls, barriers or fences.*

*The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.*

We submit that the findings of ZR §73-311 are met and respectfully request that the application be granted.

We respectfully submit that this application meets the findings of ZR §73-311.

- (a) As shown on the included plans and photos of the Premises, the subject drive-through contains reservoir space for not less than 10 vehicles. The dimensions have not changed since the 2015 grant.
- (b) The drive through facility will cause minimal interference with traffic flow in the immediate vicinity and will not unduly inhibit surface traffic or pedestrian flow. Vehicles which consists of four traffic lanes and two parking lanes situated to the east of the site and there is a buffer fence to the west of the site.

The eating or drinking establishment with an accessory drive-through facility fully complies with the accessory off-street parking regulations for the R4/C1-2 zoning district where the Premises is located. Pursuant to ZR Section 36-21, the minimum required number of parking spaces is 10; the existing and proposed number of parking spaces is 25. Thus, the eating and drinking establishment fully complies with the accessory off-street parking requirements for the indicated zoning district.

Adequate pedestrian protective measures/ controls are present within the Right Of Way (i.e.: crossing signals, pedestrian ramps, striped crosswalks, etc.) and sidewalks are sufficiently wide to prevent congestion and/ or conflicts with site operations. Traffic along roadways at the site is typical of what is experienced in many areas of the five boroughs.

- (c) The character of the commercially zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle. Existing sites in the immediate vicinity.
- (d) The drive-through facility shall not have an undue adverse impact on residences within the immediate vicinity of the subject premises. A drive-through reduces the need for parking and provides a convenient method of obtaining food. Any potential adverse impacts are mitigated by conditions that your Board has imposed on the Premises.



## **ERIC PALATNIK, P.C.**

In terms of noise, as shown on the plans and specifications attached, noise levels would have minimal impact to neighbors. Drive-through speaker that is located on digital order point shall always have active noise control (AVC) on during use. The specifications for the menu order board and speakers Automatic Volume Control (AVC) are shown on BSA plan drawing "BSA-011.00".

Further as explained in the attached Environmental Assessment Statement, *the drive-through facility has operated since 1990 and is a fixture of the neighborhood. Granting the renewal of the Special Permit to allow the existing drive-through facility's use does not present foreseeable "hazards" or "disadvantages" to the community. Because the application does not seek to change the existing use, there are no additional adverse effects on the privacy, quiet, light, or air in the neighborhood. To the contrary, the drive-through facility provides convenient access to customers. By allowing customers to order and receive food without requiring them to park, the drive-through reduces traffic congestion and preserves accessible street parking.*

*Furthermore, the drive-through facility has operated without complaints since 1990 (see 'Department Of Buildings Property Profile'). The facility operates its drive-through sound system in such a way that it does not contribute to the levels of ambient noise. The lights are positioned to not shine onto neighboring properties; fences and landscaping are provided; and trash is stored in an enclosed receptacle.*

- (e) The drive-through facility shall not have an undue adverse impact on residences within the immediate vicinity of the subject Premises. There is adequate buffering between the drive-through facility and adjacent residential uses. As the attached plans and photographs show, a wall that features landscaping separates the drive through facility and adjacent residential uses.

We submit that the findings of ZR § 73-03 and § 73-311 are met and respectfully request that the extension of term be granted.

### **VIOLATION**

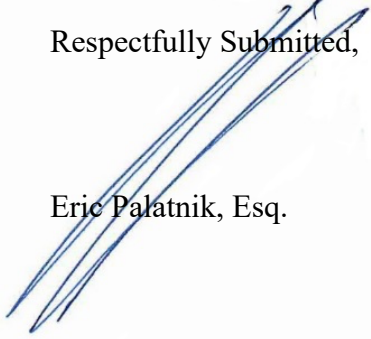
As depicted on the attached DOB computer printout, there are no open DOB or ECB violations.

**ERIC PALATNIK, P.C.**

**CONCLUSION**

For all of the foregoing reasons, it is respectfully requested that this application be granted in all respects.

Respectfully Submitted,  
Eric Palatnik, Esq.

A handwritten signature in blue ink, consisting of several overlapping, slanted strokes, is positioned over the typed name "Eric Palatnik, Esq." in the signature block.