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**May 3, 2022**

Lisa Deller  
Christine Hunter  
Co-Chairs, Land Use Committee  
Community Board 2 / Queens  
43-22 50<sup>th</sup> Street, Suite 2B  
Woodside, New York 11377

Re: BSA Cal No 233-15-BZ  
45-40 Vernon Boulevard, Long Island City  
Block 26, Lots 4, 8

Dear Co-Chairs Deller and Hunter:

Thank you and the Land Use Committee for the opportunity to present on April 20<sup>th</sup> the revised variance application submitted to the NYC Board of Standards and Appeals ("BSA") for a mixed use residential and commercial development at 45-40 Vernon Boulevard (the "Property"). This letter provides responses to the questions asked by the committee members at the meeting.

## Project Overview

As we presented at the meeting, the Property was used for over 100 years for industrial uses, including use by the Paragon Paint and Varnish Company from 1915 to 1998. As a result, the Property suffered from heavy environmental contamination, to the extent that it was declared in 2009 a "significant threat" to health and the environment by the NYS Department of Environmental Conservation. The cost to remediate the environmental contaminants, which to date has been approximately \$13.26 million, and would cost an additional approximately \$4.8 million to construct an as-of-right building, does not allow for a reasonable financial return when the property is developed under the current M1-4 zoning district. The proposed development ("Development"), which would allow for a reasonable financial return, involves the restoration and adaptive reuse of the four-story Paragon Paint building fronting on Vernon Boulevard, and the construction of a new 26-story building connected to and located behind the Paragon Paint building. In total, the Development would contain 212,994



square feet of floor area (5.52 FAR), with 203,954 square feet of residential use (226 units) and 9,040 square feet of ground floor commercial space. The Development would also provide 8,028 square feet of publicly-accessible open space (approximately 20 percent of the property) with the neighborhood's first direct pedestrian connection from Vernon Boulevard to a new public waterfront walkway along Anable Basin.

In order to construct the Development, waivers are required to allow: (1) residential use in a manufacturing zoning district; (2) a height of 262 feet, which exceeds the 110-foot height limit (but complies with the height limit for community facility buildings); (3) a setback of 15 feet (instead of 30 feet) from the shore public walkway above the 60-foot base height; and (4) a residential floor plate of 9,000 square feet (instead of 7,000 square feet).

Listed below are the questions and comments raised by the committee at the Land Use Committee meeting and our responses.

1. Provide renderings of the development from street level and from the upland community.

Attached are three new renderings that we prepared in response to the above request. The renderings are taken from a pedestrian's perspective at street level (1) looking northwest on Vernon Boulevard; (2) looking southeast on Vernon Boulevard; and (3) looking east from 45<sup>th</sup> Road.

The renderings show that the Development, which restores and reuses the four-story Paragon Paint building, and locates the taller residential building 80 feet west of Vernon Boulevard and closer to the Anable Basin waterfront, is consistent with the LIC Waterfront Design Guidelines ("Design Guidelines") developed by the Department of City Planning ("DCP") for new development on the west side of Vernon Boulevard between 44<sup>th</sup> Road and Queens Plaza. The principles in the Design Guidelines include creating an "appealing transition in building scale and form from upland neighborhoods to waterfront blocks. Locate low- and mid-rise buildings where neighborhood context exists, and preserve existing architecture/resources where possible". The rendering on page 8 of the guidelines – "view south on Vernon Boulevard from under the Queensboro Bridge" demonstrates these principles and shows loft-like buildings on Vernon Boulevard in front of taller buildings on the waterfront, consistent with the design of the Development. The renderings and the Design Guidelines are attached as Exhibit A.

2. Provide elevations that show the proposed development in context of its surroundings (and not just looking west towards the tall buildings in Queens West).



Attached are elevations (Exhibit B) looking to the north, south and west that show the Development in the existing context. As shown in the elevations, the Development's 262-foot height is lower than the existing residential buildings located on the waterfront to the west, including 45-45 Center Boulevard, which is 391 feet in height, fronts on Anable Basin and the East River, and is located just 450 feet west of the Property. Elevations showing a future context, assuming a build out under the previously proposed Anable Basin Rezoning, are also provided. Although the Anable Basin Rezoning proposal from 2018 was placed on hold as the City pursued a development for the area with Amazon (which was subsequently terminated), it is reasonable to expect that a similar rezoning proposal involving mixed commercial and residential use and taller buildings along the waterfront (consistent with DCP's Design Guidelines discussed above) will be advanced by the Adams administration. It is important to note that the scoping document in the Anable Basin Rezoning (excerpt attached as Exhibit C) proposed a building height of 350 feet for our property, whereas our proposal is much lower at 262 feet. The proposed FAR for the Property was 6.16 for residential use and 7.16 for non-residential use, whereas the Development's FAR is lower at 5.52.

3. Provide financial feasibility analysis for a development under an R6A/C1-5 zoning district (i.e., assume the extension of the zoning district located immediately to the south).

An R6A/C1-5 district would allow for a total of 3 FAR of residential use and 1 FAR of commercial use (total 3 FAR), with a base height between 40 and 60 feet and a total height of 70 feet. A total height of 75 feet (7 stories) is allowed if the ground floor has a height of 13 feet.

As demonstrated in the attached memo from Jack Freeman of Capalino, the project's financial consultant (see "Financial Memo", Exhibit D), this scenario would not be financially feasible, as it would result in a loss of approximately \$8.6 million. The 3 FAR in an R6A/C1-5 development would not allow for sufficient development and resulting revenue to overcome the premium hardship costs relating to remediation. As noted in the Financial Memo, the analysis does not include the additional remediation costs that would be required if the portion of the property fronting on 46<sup>th</sup> Avenue would be redeveloped with a new building.

4. Discuss why an as-of-right community facility building, which is permitted to have an FAR of 6.5 and a total height of 226 feet, is not being considered.

Community facility uses in the M1-4 district are extremely limited. The only permitted uses are Use Group 4A houses of worship and ambulatory diagnostic or treatment facilities, Use Group 4B open uses (such as agricultural uses or



outdoor tennis courts), and Use Group 3A museums that are ancillary to existing movie or television studios. The owners of the property did market the property for over a year in an attempt to attract Use Group 4A ambulatory diagnostic or treatment facilities. However, the development of a new community facility building at the property is not financially feasible without an anchor tenant.

5. Address how the proposed development would mitigate the risk of flooding at the property and danger to property and lives.

The Development is located within an AE flood hazard zone (i.e., within the 100-year floodplain) and therefore is subject to the Flood Hazard Area Regulations of Article VI, Chapter 4 of the Zoning Resolution and Appendix G of the Building Code. As required by these regulations, all habitable space and critical building systems must be located above the design flood elevation (DFE).

The DFE for the property is + 13'-0" based on the North American Vertical Datum of 1988 (NAVD 88). The Development does not contain a cellar, and the ground floor would be dry floodproofed and would not house critical equipment nor would it contain residential uses. The building's second floor would have an elevation of approximately + 24.4 NAVD 88 and would house residential units, residential amenity spaces, and MEP infrastructure. Therefore, the lowest floors with habitable space would remain above the 1 percent annual chance flood elevation through the 2100s at all forecast levels. Additional measures include fortifying the foundations from wind and flood loads, specifying flood-resistant exterior materials, and providing flood barriers at the storefront openings in the restored Paragon Paint building.

In addition, conceptual design for the public open space, which has been developed in concert with DCP, has been designed to slope upward, so that the elevation at the Anable Basin waterfront walkway is one foot higher than the elevation at the entrance to the open space at Vernon Boulevard. The design is consistent with DCP's Design Guidelines, which call for resilient strategies, such as a change in elevation in new developments with a permeable and active public realm. The Property's timber bulkhead on the Anable Basin was also replaced by a new sheet pile bulkhead. The new bulkhead's height is approximately three feet higher than the earlier bulkhead.

6. Address how the owners and predecessors-in-title are not responsible for the contamination on the Property and, related, how you are able to make the self-created hardship ("D") finding for a variance.

As discussed in our application, the Property was used for industrial purposes for over 100 years, including paint and varnish manufacturing



packaging, storage and shipping, bottle and create storage, a chalk products company, sheet metal works including metal painting and fabrication, and a vehicle transfer garage. Paragon Paint developed facilities between 1915 and 1923 and operated at the Property until 1998. Modern environmental regulation did not begin in New York until the early 1970s, and most hazardous materials regulation did not begin until the mid 1980s. That means for most of the time that this facility operated, the release of contaminants into the environment was unregulated. Even if one just considers the relative years of operation before and after 1980 (the year that Congress enacted the federal Superfund statute) the significant majority of the contamination at this facility arose from lawful operations and likely occurred before modern environmental regulations.

Lot 4, which contains the Paragon Paint building on Vernon Boulevard and the warehouse building on 46<sup>th</sup> Avenue, was enrolled in the Brownfield Cleanup Program ("BCP") in September 2008, based on the extensive historical industrial usage of the Property and "Areas of Concern" identified in Phase I and II environmental site assessment reports ("ESAs") conducted between 2005 and 2007. Importantly, the State first enacted the BCP in late 2003. This means that less than five years elapsed between the first enactment of the BCP and the filing of an application to admit the Property into the BCP. Contrast this with the nearly 100 years that the facility operated before that, when there was no BCP or other environmental regulation and during which the facility almost surely released hazardous substances into the environment.

The Brownfield Cleanup Agreement ("BCA") was originally issued in September 2008 to 5-49 46th Ave. LLC, the entity that had owned the property since 1997. In July 2010, the BCA was amended to include Anable Beach, Inc., and in July 2011, the BCA was amended a second time to include Vernon 4540 Realty LLC. The Certificate of Completion was issued in December 2016 to 5-49 46th Ave. LLC, Anable Beach, Inc., and Vernon 4540 Realty LLC, and modified in 2019 to include CSC 4540 Property Co, LLC, the current owner of the Property and the applicant for the variance application, and remove Anable Beach, Inc. Anable Beach, Inc. was dissolved in September 2013.

DEC determined that all of these entities identified above qualified as "Volunteers" under the BCP. DEC's regulations define a "Volunteer" as "*an applicant who is not liable for disposal of hazardous waste or discharge of petroleum at the site*" and who "*exercises appropriate care with respect to contamination found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future release; and (iii) prevent or*



*limit human, environmental, or natural resource exposure to any previously released contamination.” (6 NYCRR 375-3.2(c)(2))*

As “Volunteers”, therefore, the owner and predecessors in title by definition were not responsible for any of the contamination at the Property and, in fact, took all appropriate steps to address whatever contamination already existed at the time that they acquired the Property.

Furthermore, the BSA has identified environmental contaminants as the basis of or contributing to the unique physical conditions causing an economic hardship in a variety of cases. Like the subject application, the precedents include environmental remediation associated both with soil and ground-water conditions and with conditions in existing buildings, and three BSA approvals involved applicants enrolled as volunteers in the BCP. A number of the BSA decisions explicitly state that the BSA “does not regard contaminated soil conditions to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which pre-dates modern environmental regulations”. The resolutions are attached as Exhibit E.

7. Provide the BSA decisions referenced during the meeting that involve contamination as the basis of the uniqueness (“A”) finding.

As noted above, the BSA resolutions that involve contaminated site conditions as the basis of the uniqueness (“A”) finding are attached as Exhibit E.

8. Provide evidence that the owners will actually receive the Brownfield tax credits.

The owners of the property were issued a Certificate of Completion (COC) for the Brownfield Cleanup Program by the NYS Department of Environmental Conservation on December 15, 2016. The COC, as modified in 2019, is attached as Exhibit E. Subsequent to the issuance of the COC, the owners filed for the Brownfield tax credits. The NYS Department of Taxation and Finance completed an audit of the site preparation portion of the tax credits, and the audit results have led to an approved payment to the applicant. In addition to the tax credits related to site preparation, the owners are eligible for a tax credit related to tangible property costs, once the development has been completed. The tax credits received for the site preparation costs and the anticipated tangible property tax credits are included in the financial analysis included in the application. Even with the inclusion of the tax credits, the financial analysis demonstrates that an as-of-right commercial development results in a financial loss of over \$17 million.



9. Affordable housing should be provided, regardless of the outcome of the replacement of the State's Affordable New York/421-a Program. There are other programs available, including 420-c and Article XI.

The proposed development includes 30 percent affordable housing and assumes a comparable replacement to the State's Affordable New York program. As stated in the attached Financial Memo (Exhibit D), affordable housing can only be provided at this site if a comparable government program is available, as the government program offsets the loss in revenue from affordable housing. Without government support for affordable housing, the development would require additional floor area beyond what is proposed in the variance application in order to overcome the site's economic hardship and realize a reasonable return. Requesting additional floor area to provide affordable housing would not allow us to make the variance finding that the requested waivers are the minimum necessary to afford relief.

The Financial Memo provides an analysis of (1) the proposed development with 30 percent affordable housing with a government program; (2) the proposed development with 30 percent affordable without a government program; and (3) the proposed development without affordable housing (and no government program). As demonstrated in the analysis, only the proposed development with 30 percent affordable and a government program is financially feasible.

The Financial Memo also addresses the Article XI and 420-c Tax Incentive programs identified by the Community Board 2's Land Use Committee. As discussed in the Memo, neither program is suitable for this property as neither program creates the additional value necessary to overcome the economic hardship on the property. Both programs also require the involvement of not-for-profit developers, which is not the case with the current property owner.

10. Will space be provided for bike parking for the public, including electric bikes?

The applicant would welcome the opportunity to work with the community in identifying an appropriate location within the publicly-accessible open space or on the sidewalk adjacent to the property for the installation of bicycle parking for the public.



11. Will you commit to using union workers on this project.

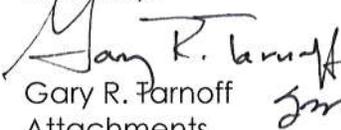
The applicant has an existing contract with 32BJ, the building services union. The applicant is also open to using union construction workers on the development of the project.

12. Hiring of local artists

The applicant welcomes the opportunity to work with local artists on this project. The applicant has employed local artists in a number of projects, including the painting of murals (both indoor and outdoor) in recently completed commercial and residential developments, including a recently developed hotel in Soho.

Please feel free to contact me at (212) 715-9183 or Jeff Mulligan at (212) 715-9105 if you have any further questions.

Sincerely,

  
Gary R. Tarnoff  
Attachments