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March 22, 2019

Via Electronic and First Class Mail

Mr. Richard Berkley
Chairperson
Board of Zoning Appeals
200 Henry Johnson Boulevard
Albany, NY 12210

**Re: LASNNY Area Variance Application
Project # 00252**

Dear Chairperson Berkley and Members of the BZA;

I represent the Legal Aid Society of Northeast New York (LASNNY) which has submitted the above-referenced application for an area variance to permit a wall sign of approximately 35 sq. ft. which would exceed the 25 sq. ft. otherwise permitted by the USDO. At a previous meeting, the BZA expressed its concern that granting the area variance would establish a potentially inappropriate precedent for sign variances and asked LASNNY to address that concern. This letter is in response to that concern.

As you know as the appellate body offering relief from the USDO, the role of a zoning board of appeals is to act as a safety valve to relieve the pressure on property owners where strict compliance with a zoning law would result in an unnecessary burden. When deciding variance applications, a zoning appeals board must provide a rational basis for its decisions and those decisions must not be arbitrary and capricious. Evidence that an appeals board is not acting in an arbitrary manner would be if similarly situated applicants are treated consistently. And thus, a decision of an appeals board can have precedential value for other applications. However, every application for an area variance is peculiar to the facts of the application. Rarely are two area

variance applications essentially identical, distinctions are made based upon the location of the property and the specifics of the variance request.

We have reviewed the BZA's docket of decisions for 2018 and 2019 concerning area variances for signs. We have identified four applications for sign variances. The BZA granted two variances and denied the other two. Those decisions are discussed below:

1. Project # 79; 899 Western Avenue. Approved. The BZA approved a variance to permit a 36 sq. ft. free standing sign in the MU-NE district, almost twice the size of the permitted maximum of 20 sq. ft. The BZA noted that there are similar signs in the neighborhood and it would not change the character of the area and would replace an existing sign. The BZA also noted that the sign is not illuminated and would assist in visibility for customers.
2. Project #194; 1475 Washington Avenue. Approved. The BZA approved an area variance for a new projecting sign of 80 sq. ft. more than twice the size of the permitted 32 sq. ft. in the MU-CU district. The BZA approved the sign because it was replacing an existing sign due to change in management. The BZA also found that a smaller sign would impede visibility of the business and that the variance would not impact the neighborhood.
3. Project #72; 156 State Street. Denied. The BZA denied an application for second wall sign on a building where only one is permitted. The property was located in the MU-DT district. The supposed purpose of the sign was to cover a damaged portion of the wall. The BZA denied the application because it determined there were alternative means for repairing the cosmetic damage to the wall and the BZA was concerned about establishing precedent for a second wall sign when the purpose of the sign was really to repair a wall.
4. Project #73. 107 Champlain Street. Denied. The BZA denied an application for a 66 sq. ft. wall sign in the I-1 district which otherwise permits a 32 sq. ft. maximum sign. The BZA denied the application because at more than twice the size permitted it would cause a change in the neighborhood character. The BZA also found that the stated purpose of the sign to increase visibility would only be temporary until the vacant adjacent lot was developed and then would block the sign.

Considering the foregoing decisions and comparing those to the LASNNY application, LASNNY's request is more similar to the projects that were approved in contrast to the variances that were denied. Like #79, LASNNY's sign was designed to match other signs in the neighborhood including the existing Equinox sign. As with # 194, the LASNNY sign is required as part of the phased occupation of the Equinox building. If approved, the Equinox sign will be removed within 2 years once Equinox's existing lease terminates. At that point the LASNNY sign will be the only wall sign. In contrast to the signs that were approved, LASNNY is only requesting approximately a 45% increase over the permitted signs as compared with the approximately 100% increase for the approved signs.

Comparing the LASNNY application to the denied applications demonstrates that LASNNY's request is distinguishable from the denied applications. LASNNY is not requesting

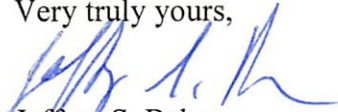
an additional sign in order to hide a façade defect (#72) nor is it proposed for specious reasons regarding visibility (#73). And, unlike the denied applications, LASNNY is not asking for permission for a sign that is disproportionate to the building or neighborhood.

The BZA should also note that not only was the sign designed to match the size and style of the Equinox sign, it was designed to fit within the existing architectural features on the façade designed for a wall sign. A sign limited to the 25 ft limit would present an aesthetic oddity of a too small sign located within a larger masonry frame.

Submitted with this letter is an email letter of support from Ed Swyer, owner of 97 Central Avenue adjacent to the LASNNY building. As Mr. Swyer states, he supports LASNNY's request for a variance and believes that the sign will be a benefit to the area, not a detriment.

In summary, while it is important for the BZA to act consistent with its prior determinations, it is evident that LASNNY's application is consistent with prior sign variances granted by the board. LASNNY's requested variance is smaller than signs that were both approved and disapproved by the BZA. The sign will essentially duplicate, on a temporary basis, an existing sign and after the Equinox tenancy ends, will be the only sign on the building. LASNNY has no objection to the BZA placing a condition on the variance requiring the removal of the Equinox sign at the end of the tenancy.

Thank you for your consideration of this supplemental material.

Very truly yours,

Jeffrey S. Baker

Enclosure

From: Ed Swyer [<mailto:ESwyer@stuyvesantplaza.com>]
Sent: Thursday, March 21, 2019 1:10 PM
To: Deanne L. Grimaldi <dgrimaldi@lasnny.org>
Subject: sign variance for the legal aid society at 95 Central

Dear Deanne,

As the owner of the building at 97 Central Avenue next to LASNNY's office is located. I support LASNNY's application for an area variance for their sign. I have viewed the mockup of the proposed sign and understand that it exceeds the 25 square foot allowed by the existing zoning laws by 11 square feet or 44% larger.

The proposed sign is consistent with the signs on other buildings in the area, is aesthetically pleasing, appropriate to the size of the façade of the building and will not be detrimental to the neighborhood or change the existing character.

The MU-FC district regulations are intended to encourage the redevelopment of the area and LASNNY's presence and its redevelopment of the Equinox building are in important investment in the area. The requested sign will help make LASNNY visible to clients and will assist in the redevelopment of the area.

Edward P. Swyer
President

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