

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Queens Neighborhoods United (aka "QNU"), New York City
Council Member Francisco Moya, New York State Senator
Jessica Ramos, Desis Rising Up and Moving (aka "DRUM"),
Alexandra Owens, Tania Mattos Jose and Jorge Cabanillas,

Petitioners,

Index No.

For a Judgment Pursuant to CPLR Art. 78 and a Declaration
Pursuant to CPLR 3001

**AFFIDAVIT OF
NEW YORK CITY
COUNCIL MEMBER
FRANCISCO MOYA**

-against-

New York City Board of Standards and Appeals, New York City
Department of Buildings, AA 304 GC TIC LLC, 82 BAXTER
TIC LLC, ZM 304 GC INVESTOR TIC LLC, 304 GC TIC
LLC, Sun Equity Partners, Heskell Group, and Target
Corporation,

Respondents.

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State of New York)
) SS:
County of _____)

Francisco Moya, being duly sworn, deposes and says:

1. I represent District 21 in the New York City Council, which encompasses all of Corona, most of East Elmhurst, and parts of Jackson Heights. I also serve as the Chair of the Zoning and Franchises subcommittee of the City Council.
2. I am a resident of Corona, Queens. My office is at 106-01 Corona Avenue, Corona, NY 11368.

The residents of the neighborhoods I represent are primarily working-class and immigrant families.

4. My councilmanic district has a variety of zoning districts, including areas zoned for local retail only. These local retail districts are embedded in residential neighborhoods where the infrastructure is not designed to support a massive influx of shoppers from outside the area. Department Stores and large Variety Stores are not allowed in Local Retail districts. The sidewalks are narrow, the streets around the lot are small one-way streets with bus routes on them. Below is a Google Street View image of the area, taken in September 2018, with the location where the Respondents are currently building a mall with Target as anchor tenant based on the unlawful September 2018 DOB permit underground behind the green construction wall in the center.



5. The lot where the Respondents in this case want to install a 23,000+ square foot Target department store is zoned for local retail only. Under the current zoning regulations, retail locations may not exceed 10,000 square feet.

6. It is the job of the City Council to enact the N.Y.C. Zoning Resolution and make changes to it when needed.
7. In September 2017, the Respondents in this case submitted an application to the Department of City Planning to rezone this property. The rezoning would have changed this lot from being in a Local Retail district (C1-3) to being in a Destination Retail district (C4-5x) so that they could lawfully lease to Target, which is a department store.
8. C4-5x is the zoning district that the Queens Center Mall property is in. Changing the zoning would have permitted something similar to the Queens Center Mall to be built on the 82nd Street property.
9. The Respondents withdrew the application in 2018.

10. I was surprised the Department of Buildings granted the Respondents a permit to build for a tenant that I had been led to believe would only be allowed if the City Council approved the change that the Respondents asked us for: a 23,000+ square foot Target store.

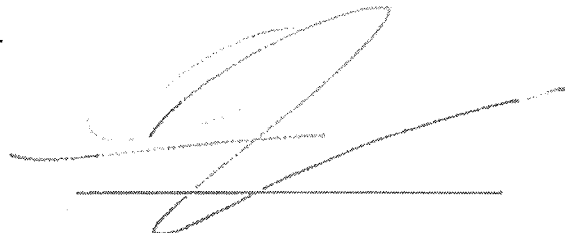
11. When the Board of Standards and Appeals was accepting public comments on the Appeal of that permit, BSA-166A-2018, filed by QNU, I submitted a statement, attached as Exhibit 1, and directed a member of my staff, John White, to testify at the first hearing on March 7, 2019.

12. I have participated actively in all avenues available to me as a Council Member to ensure that the Respondents adhere to the current zoning of the property.

13. As those efforts have not been successful, I respectfully request that this

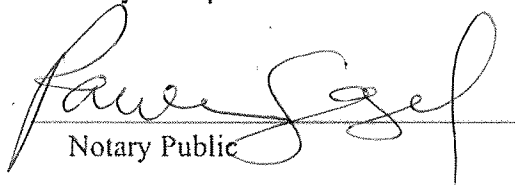
Court:

- (a) declare that BSA's determination upholding the DOB's issuance of a building permit or permits to the Developer was in violation zoning;
- (b) annul all permits for construction of a building at this site to be used for retail stores larger than 10,000 square feet per establishment, including cellar space;
- (c) enjoin any further steps by any of the Respondents construction of a building with a space to accommodate a prohibited 23,000+ square foot in this local retail district; and
- (d) declare that the Department of Building's practice of allowing applications to be submitted under the self-certification of objections procedures is contrary to its obligations under the New York City Charter § 643 to enforce the Zoning Resolution, which City Council enacts.



Council Member Francisco Moya

Sworn to before me this
20th day of September 2019



Notary Public

PAULA Z. SEGAL
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02SE6273635
Qualified in King County
Commission Expires December 17, 2020

Exhibit 1

DISTRICT OFFICE
106-01 CORONA AVENUE
CORONA, NY 11368
TEL: (718) 651-1917
FAX: (718) 565-5937

LEGISLATIVE OFFICE
250 BROADWAY, SUITE 1768
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THE COUNCIL OF
THE CITY OF NEW YORK
FRANCISCO MOYA
COUNCIL MEMBER, 21ST DISTRICT, QUEENS

COMMITTEES
CULTURAL AFFAIRS, LIBRARIES,
AND INTERNATIONAL INTERGROUP RELATIONS
FINANCE
LAND USE
PARKS AND RECREATION
FOR-HIRE VEHICLES
HOSPITALS

SUBCOMMITTEES
ZONING AND FRANCHISES (*CHAIRMAN*)

CAUCUSES
BLACK, LATINO/A, AND ASIAN CAUCUS (BLAC)

April 29, 2019

Chairperson Margery Perlmutter, R.A., Esq.
New York City Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

RE: Calendar #2018-166-A, Appeal 40-31 82nd Street aka 40-19 82nd Street

I write to you in support of the appeal challenging the Department of Buildings' permit issued for the development of a mixed-use building located at 40-31 82nd Street aka 40-19 82nd Street, Queens.

Retail space at that location is currently zoned for Use Group 6. The Target set to occupy retail space does not conform to the Use Group 6 definition and far exceeds the Use Group 6 square-foot cap of 10,000.

The Target's plan to split retail space between the property's cellar and first floor in order to meet the requirements of Use Group 6 is so liberal an interpretation of the zoning code as to make it absurd. Use Group 6 is for local consumer needs such as small shops, laundromats or clothing stores. Big-box stores like Target — slated to occupy more than 20,000 square feet — is more in line with Use Group 10, which provides for larger department stores.

I urge the Board of Standards and Appeals to rule in favor of this appeal and require the site to conform to its existing zoning regulations.

Sincerely,

Francisco Moya

Chairperson Margery Perlmutter, R.A., Esq.
New York City Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

John White
Office of Council Member Francisco Moya
106-01 Corona Ave.
Corona, NY 11368

May 21, 2019

Testimony in Support of the Zoning Challenge for Calendar #2018-166-A, Appeal 40-31 82nd Street aka 40-19 82nd Street

Good morning, Chair Perlmutter and members of the Board of Standards and Appeals. My name is John White and I'm here to speak on behalf of Council Member Francisco Moya who represents the area of Elmhurst, Queens, where a Target is slated to occupy retail space.

Ultimately, this issue comes down to the language of the zoning rules, and in that respect, it is fairly straight forward. The proposed Target does not conform to the zoning for the site at 40-31 82nd Street, a.k.a 40-19 82nd Street, specifically the Use Group 6 zoning. Use Group 6 zoning carries a size limit of 10,000 square feet. The proposed Target is slated to occupy retail space that is more than double that size, far exceeding the Use Group 6 size limit.

The Target's plan to split retail space between the property's cellar and first floor in order to meet the requirements of Use Group 6 is so liberal an interpretation of the zoning code as to make it absurd.

Furthermore, Use Group 6 is intended for local consumer needs such as small shops, laundromats or clothing stores. Big-box stores like Target more closely align with a Use Group 10 zoning, which provides for larger department stores and which this site is not zoned to accommodate.

As the Board is aware, Council Member Moya wrote Chair Perlmutter in April to express his support for the zoning challenge, just as he wrote the Department of Buildings last September. We urge you once again today to rule in favor of this appeal.

Thank you for your time and consideration on this issue.