

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

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

Index No.: 159519/ 2019

Petitioners,

**NOTICE OF ENTRY**

For a Judgment Pursuant to CPLR Article 78 and  
a Declaration Pursuant to CPLR 3001,

- against -

New York City Board of Standards and Appeals, New York  
City Department of Buildings, AA 3043 GC TIC LLC, 82  
BAXTER TIC LLC, ZM 304 GC INVESTOR TIC LLC,  
304 GC TIC LLC, Sun Equity Partners, the Heskell Group  
and Target Corporation,

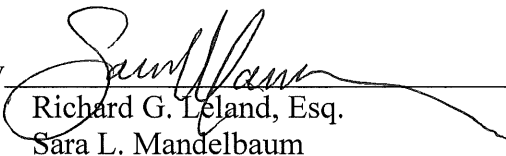
Respondents.

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PLEASE TAKE NOTICE, that the within is a true copy of a Decision and Judgment of  
the Honorable Lynn R. Kotler, J.S.C., dated February 13, 2020, and duly entered in the office of  
the Clerk of New York County on February 14, 2020, in the above-entitled action.

Dated: New York, New York  
February 14, 2020

**AKERMAN LLP**

By   
Richard G. Leland, Esq.  
Sara L. Mandelbaum  
*Attorneys for Respondent Developers*  
666 Fifth Avenue, 20th Floor  
New York, New York 10103  
Tel: (212) 880-3800  
Fax: (212) 880-8965

TO:

Oksana G. Wright, Esq.  
FOX ROTHSCHILD LLP  
Attorneys for Respondent  
Target Corporation  
101 Park Avenue, 17<sup>th</sup> Fl.  
New York, New York 10178  
(212)878-7900  
[owright@foxrothschild.com](mailto:owright@foxrothschild.com)

Paula Z. Segal, Esq.  
Daniel Carpenter-Gold, Esq.  
TakeRoot Justice  
Attorney for Petitioner  
123 Williams Street, 16<sup>th</sup> Floor  
New York, New York 10038

Ellen Parodi, Esq.  
JAMES E. JOHNSON  
Corporation Council of the City of New York  
Attorney for Respondent BSA and DOB  
100 Church Street, Room 5-179  
New York, New York 10007  
(212) 356-1646

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C.

PART 8
DECISION AND JUDGMENT
INDEX NO. 159519/2019

Queens Neighborhoods United et al.

MOT. DATE

- v -

MOT. SEQ. NO. 001

New York City Board of Standards and Appeals et al.

The following papers were read on this motion to/for Article 78

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits NYSCEF DOC No(s).
Notice of Cross-Motion/Answering Affidavits — Exhibits NYSCEF DOC No(s).
Replying Affidavits NYSCEF DOC No(s).

This is an Article 78 proceeding brought by a neighborhood coalition and a number of elected officials seeking to challenge the construction/location of a Target store in Queens, New York. The Target store is being built pursuant to a permit which authorizes a 22,000+ square foot cellar accessed by a set of escalators at the ground floor level. Petitioners contend that "[t]his complex design is a subterfuge that [the project developers] are attempting to use to circumvent the restrictions imposed by Local Retail zoning district of the property." Respondents are the New York City Board of Standards and Appeals ("BOA") and the New York City Department of Buildings ("DOB"), developers/owners and Target itself which has entered into a lease to rent space for a store on the property. Respondents have answered the petition. For the reasons that follow, the petition is denied.

On or about May 24,2018, Respondents 304 GC TIC LLC,92 Baxter TIC LLC, ZM 304 GC Investor TIC LLC, and 304 GC TIC LLC ("Respondent-Owners"), the owners of the property located at 40-31 82nd Street, Flushing, New York (the "subject property"), submitted a Plan/Work Application ("PWI Application") to DOB to build a new two-story commercial building at the subject property. DOB issued a permit for the construction of the new building in connection with the PWI Application.

On August 8,2018, DOB received a Zoning Challenge, contesting the permit and alleging that the application submitted by Respondent-Owners violated the Zoning Resolution. The challenge asserted that the Target store was a department store rather than a variety store and also took issue with the exclusion of the cellar space from the square footage calculation in determining whether the Target store complies with C1 Local Retail restrictions on large "variety stores" over 10,000 square feet.

On September 20,2018, after considering both the challenge and Respondent-Owner's amended PWI application, DOB determined that the plans complied with the Zoning Resolution and re-issued a permit for the construction of the new building at the subject property. On or about October 18,2018,

Dated: 2/17/20

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [ ] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER
3. Check if appropriate: [ ] SETTLE ORDER [ ] SUBMIT ORDER [ ] DO NOT POST
[ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

Petitioner Queens Neighborhoods United ("QNU") c/o Tania Mattos appealed DOB's issuance of the September 20, 2018 permit to BSA (the "appeal application") on the grounds that it violated the zoning resolution. After multiple submissions from Petitioner QNU, DOB, the New York City Department of City Planning ("DCP"), Respondent-Owners, and Respondent Target Corporation ("Target"), BSA denied the appeal application.

Petitioners now argue that the court should find that BSA irrationally determined that the Target store was a variety store, and further, that BSA irrationally determined that the Target store does not have a floor area exceeding 10,000 square feet as defined in the zoning resolution.

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision: was made in violation of lawful procedure; affected by an error of law; or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]). An agency abuses its exercise of discretion if it lacks a rational basis in its administrative orders. "[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after *quasi*-judicial hearings required by statute or law" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974] [emphasis removed]; see also *Matter of Colton v. Berman*, 21 NY2d 322, 329 [1967]).

BSA's determination was rational and reasonable. BSA's determination that the Target store is a variety store is consistent with the plain meaning of the term. Petitioners have failed to establish that even if Target is a department store, it cannot also be characterized as a variety store.

As for the second prong of petitioners' petition, the court finds that BSA properly excluded the cellar space from its calculation of "floor area". The aforementioned term is defined in the zoning resolution as "the sum of the gross areas of the several floors of a building or building's, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings . . . the floor area of a building shall not include (l) cellar space, except where such space is used for dwelling purposes". Here, the Target store will occupy less than 10,000 square feet on the first floor, and 23,392 square feet in the cellar of the new building. The clear language of the zoning resolution expressly excludes the cellar space from the calculation of floor area.

Petitioners' arguments would have the BSA and DOB ignore the relevant provisions of the zoning resolution. Indeed, such a result would be irrational and arbitrary. If the legislature had intended for cellar space to be included in the calculation of floor area, it would have written the zoning resolution as petitioners want. Since the legislature did not do so, the cellar space argument fails.

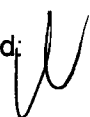
Finally, to the extent that petitioners argue that the DOB do not follow proper procedure, such a ground was not raised before the BSA and therefore cannot be reviewed by this court.

In light of this result, petitioners' claims for injunctive or declaratory relief must be dismissed. Similarly, respondents' remaining arguments regarding standing are denied as moot.

Accordingly, it is hereby **ADJUDGED** that the petition is denied and this proceeding is dismissed.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated: 2/13/20  
New York, New York

So Ordered:   
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Hon. Lynn R. Kotler, J.S.C.