
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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January 19, 2006

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Tuesday, January 10, 2006**

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Affecting Calendar Numbers:

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180-05-BZ	1511 Third Avenue, a/k/a 201 East 85 th Street, Manhattan

DOCKET

New Case Filed Up to January 10, 2006

367-05-A

639 Sixth Avenue, East side of Sixth Avenue 128' 2" northe of intersection of 18th Street and Sixth Avenue, Block 874, Lot(s) 9 & 10, Borough of **Brooklyn, Community Board: 7**. Appeals - Subject seeks a determination that the owner of the premises acquired a common-low vested right to continue development.

368-05-A

400 15th Street, South side of 15th Street 205 feet 5 inches west of the intersection of 8th Avenue and 15th Street, Block 1104, Lot(s) 27, Borough of **Brooklyn, Community Board: 7**. Appeals - Subject seeks a determination that the owner of the premises acquired a common-low vested right to continue development.

369-05-BZ

908 Clove Road, Clove Road, between Bard and Tyler Avenue, Block 323, Lot(s) 42-44, Borough of **Staten Island, Community Board: 1**. Under 72-21-To permit the proposed senior housing development.

370-05-BZY

523 West 37th Street, Interior lot, block bounded by West 37th and West 38th Streets, tenth and Eleventh Avenues, Block 709, Lot(s) 23, Borough of **Manhattan, Community Board: 4**. Extension of Time-To complete construction for a one story and mezzanine addition to an existing three-story building.

371-05-A

523 West 37th Street, Interior lot, block by West 37th and West 38th Streets, Tenth and Eleventh Avenues, Block 709, Lot(s) 23, Borough of **Manhattan, Community Board: 4**. Appeals-For a one story and mezzanie addition to an existing three-story building

372-05-BZY

28 Webster Avenue, At the intersection of Webster and Stanly Avenues, Block 111, Lot(s) 15, Borough of **Staten Island, Community Board: 1**. 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

373-05-BZY

32 Webster Avenue, At the intersection of Webster and

Stanly Avenues, Block 111, Lot(s) 16, Borough of **Staten Island, Community Board: 1**. 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

374-05-BZY

578 Riga Street, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 130, Borough of **Staten Island, Community Board: 3**. 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

375-05-BZY

576 Riga Street, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 131, Borough of **Staten Island, Community Board: 3**. 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

376-05-BZY

574 Riga Street, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 132, Borough of **Staten Island, Community Board: 3**. 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

377-05-BZY

572 Riga Street, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 133, Borough of **Staten Island, Community Board: 3**. 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

378-05-BZY

570 Riga Street, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 134, Borough of **Staten Island, Community Board: 3**. 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

379-05-BZY

560 Riga Street, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 135, Borough of **Staten Island, Community Board: 3**. 11-332 to extend

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the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

380-05-BZY

562 Riga Street, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 136, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

381-05-BZY

564 Riga Street, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 137, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

382-05-BZY

566 Riga Street, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 138, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

383-05-BZY

568 , Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 135, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

384-05-BZY

15 Carmela Court, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 126, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

385-05-BZY

17 Carmela Court, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 127, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

386-05-BZY

23 Carmela Court, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 128, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

387-05-BZY

25 Carmela Court, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 129, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

388-05-BZY

605 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 120, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

389-05-BZY

607 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 120, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

390-05-BZY

609 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 122, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

391-05-BZY

611 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 123, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

392-05-BZY

615 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 124, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

393-05-BZY

617 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 125, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

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394-05-BZY

589 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 110, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

395-05-BZY

591 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 111, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

396-05-BZY

593 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 112, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

397-05-BZY

595 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 113, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

398-05-BZY

597 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 114, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

399-05-BZY

599 Mill Road, Bound by Mill Road and Aviston Street and Riga Street, Block 4690, Lot(s) 115, Borough of **Staten Island, Community Board: 3.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Major dev. For 24 Months

400-05-BZY

3202 Morley Avenue, S/S of Morley Avenue, 44'.17" East of Cranford & Richmond Road, Block 4313, Lot(s) 4, Borough of **Staten Island, Community Board: 2.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

401-05-BZY

3206 Morley Avenue, S/S of Morley Avenue, 44'.17" East

of Cranford & Richmond Road, Block 4313, Lot(s) 2, Borough of **Staten Island, Community Board: 2.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

402-05-BZY

16 Maxie Court, South of the corner of Vanduzer Street and Broad Street, Block 616, Lot(s) 1, Borough of **Staten Island, Community Board: 1.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

403-05-BZY

18 Maxie Court, South of the corner of Vanduzer Street and Broad Street, Block 616, Lot(s) 1, Borough of **Staten Island, Community Board: 1.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

404-05-BZY

20 Maxie Court, South of the corner of Vanduzer Street and Broad Street, Block 616, Lot(s) 1, Borough of **Staten Island, Community Board: 1.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

405-05-BZY

22 Maxie Court, South of the corner of Vanduzer Street and Broad Street, Block 616, Lot(s) 1, Borough of **Staten Island, Community Board: 1.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

406-05-BZY

24 Maxie Court, South of the corner of Vanduzer Street and Broad Street, Block 616, Lot(s) 1, Borough of **Staten Island, Community Board: 1.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

407-05-BZY

26 Maxie Court, South of the corner of Vanduzer Street and Broad Street, Block 616, Lot(s) 1, Borough of **Staten Island, Community Board: 1.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

408-05-BZY

28 Maxie Court, South of the corner of Vanduzer Street and Broad Street, Block 616, Lot(s) 1, Borough of **Staten Island, Community Board: 1.** 11-332 to extend the time

DOCKET

424-05-BZY

29 Tessa Court, South of the corner of Vanduzer Street and Broad Street, Block 616, Lot(s) 1, Borough of **Staten Island, Community Board: 1.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

425-05-BZ

2409 Avenue Z, North side of Avenue Z, Bedford Avenue to the east, East 24th Street to the west., Block 7441, Lot(s) 1 & 104, Borough of **Brooklyn, Community Board: 15.** Under 72-21-To permit the construction of a three-story mixed use building containing five residential units and community facility use within an R4 district.

426-05-BZ

57-02/08 39th Avenue, Three adjacent lots comprising whole block front on south side of 39th Avenue between 57th and 58th Street, Block 1228, Lot(s) 48,52,57, Borough of **Queens, Community Board: 2.** Under 72-21-To permit the enlargement of an existing building which enlargement will exceed the maximum allowable FAR in a M1-1 ZD.

427-05-BZ

133-47 39th Avenue, Between Prince Street and College, Block 4972, Lot(s) 59, Borough of **Queens, Community Board: 7.** (SPECIAL PERMIT) 73-44-To permit the proposed retail, community facility & office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking & is contrary to ZR Sec. 36-21.

428-05-BZY

475 Capodanno Boulevard, 91.90 feet west of cross streets Father Capadanno Boulevard and Mclaughlin Street, Block 3500, Lot(s) 30 tent, 31,32,33, Borough of **Staten Island, Community Board: 2.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

429-05-BZY

473 Father Capodanno Boulevard, 91.90 feet west of cross streets Father Capadanno Boulevard and Mclaughlin Street, Block 3500, Lot(s) 30 tent, 30 31,32,33, Borough of **Staten Island, Community Board: 2.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

430-05-BZY

473 Father Capadanno Boulevard, 91.90 feet west of cross streets Father Capadanno Boulevard and Mclaughlin Street, Block 3500, Lot(s) 30 tent, 30,31,32,33, Borough of **Staten Island, Community Board: 2.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

431-05-BZY

470 Father Capadanno Boulevard, 91.90 feet west of cross streets Father Capadanno Boulevard and Mclaughlin Street, Block 3500, Lot(s) 30 tent, 30,31,32,33, Borough of **Staten Island, Community Board: 2.** 11-332 to extend the time of construction and/or obtain Certificate of Occupancy for a Minor development.

1-06-A

404 Bayside, North of Palmer Drive 10.67' feet west of Rockaway Point Boulevard., Block 16350, Lot 300, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street, and the upgrade of an existing private disposal system.

2-06-A

25 Janet Lane, North of Janet Lane 114.88 Feet of Beach 203th Street., Block 16350, Lot 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed reconstruction and enlargement of an existing one family dwelling and to upgrade an existing private disposal system.

3-06-A

439 Hillcrest Walk, West of Hillcrest Walk 48.68 Feet of Rockaway Point Boulevard., Block 16350, Lot 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street, and the upgrade of an existing private disposal system.

4-06-BZ

1435 East 21st Street, East 21st Street between Avenue M and Avenue N (apprx.113' south of Avenue M., Block 7657, Lot 39, Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT) 73-622-To allow the enlargement of a single family residence located in a residential (R2) ZD.

5-06-BZ

94-07 156th Avenue, Between Killarney Street and Cross

DOCKET

Bay Boulevard, Block 11588, Lot 67, Borough of **Queens**,
Community Board: 10. Under 72-21-

6-06-BZ

283 East 164th Street, Northwest corner of College Avenue, Block 2432, Lot 19, Borough of **Bronx**,
Community Board: 4. Under 72-21-Re-establishment-Lapse of prior approval.

7-06-A

42 Queens Walk, W/S Queens Walk 165.53' S/O Oceanside Avenue, Block 16350, Lot 400, Borough of **Queens**, **Community Board: 14.** General City Law Section 36, Article 3-Proposed to reconstruct and enlarge an existing single family dwelling, also to upgrade existing non-complying private disposal system.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

MARCH 7, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 7, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

645-59-BZ

APPLICANT – Vassalotti Associate Architects, LLP., for Cumberland Farms, Inc., owner.

SUBJECT - Application July 12, 2005 - Extension of Term of a Variance for an additional 10 years for the existing gasoline service station with accessory convenience store which expired on October 7, 2005. The premise is located in a C2-1 in an R5 zoning district.

PREMISES AFFECTED – 10824 Flatlands Avenue, Block 8235, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #18BK

139-92-BZ

APPLICANT – Samuel H. Valencia, for Samuel H. Valencia – Valencia Enterprise, owner

SUBJECT – Application July 20, 2005 – Reopening for an Extension of Term/Waiver for an eating and drinking establishment, with dancing, which expired on March 7, 2004, located on the first floor of a three story mixed use building with residences on the upper floors. The premise is located in a C2-2 in an R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side of Roosevelt Avenue, 125.53' East of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

240-90-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Keil Brothers, Inc., owner.

SUBJECT – Application September 20, 2005 – Extension of Term/Amendment of variance of an Agricultural Nursery & Truck Garden which expires on May 14, 2006. It is requested to extend the term from a 10 year term to a 20 year term and to amend to allow overnight parking for 10 vehicles.

PREMISES AFFECTED – 210-12 48th Avenue, 210th Street and 48th Avenue, Block 7369, Borough of Queens.

COMMUNITY BOARD #11Q

173-94-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for

Richard Shelala, owner; Compass Forwarding Co., Inc., lessee.

SUBJECT – Application July 25, 2005 – Reopening for an amendment of variance to permit the change in hours of operation of a freight transfer facility. The premise is located in a C2-2(R3-2) zoning district.

PREMISES AFFECTED – 159-15 Rockaway Boulevard a/k/a 165-10 144th Road, southeast corner of Rockaway Boulevard and 144th Road, Block 1327, Lot 17, Borough of Queens.

COMMUNITY BOARD #8Q

MARCH 7, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 7, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

194-04-BZ thru 199-04-BZ

APPLICANT – Agusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, aka 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, aka 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179) Borough of Brooklyn.

9033 Krier Place, aka 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178) Borough of Brooklyn.

9035 Krier Place, aka 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177) Borough of Brooklyn.

9037 Krier Place, aka 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176) Borough of Brooklyn.

9039 Krier Place, aka 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175) Borough of Brooklyn.

COMMUNITY BOARD #18BK

320-04-BZ

APPLICANT – Harold Weinberg, P.E., for Michael Reznikov, owner.

SUBJECT – Application September 20, 2004 - Proposed

CALENDAR

legalization of a Special Permit ZR§73-622 for a two-story and rear enlargement, to an existing one family dwelling, Use Group 1, located in an R3-1 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, open space and rear yard, is contrary to Z.R. §23-141, §23-47 and §54-31.

PREMISES AFFECTED – 229 Coleridge Street, east side, 220'-0" south of Oriental Boulevard, Block 8741, Lot 72, Borough of Brooklyn.

COMMUNITY BOARD #15BK

PREMISES AFFECTED – 410 8th Avenue, located on the East side of 8th Avenue between 30th and 31st Streets, Block 780, Lot 76, Borough of Manhattan

COMMUNITY BOARD #5M

Pasquale Pacifico, Executive Director

66-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum Inc., owner.

SUBJECT – Application March 16, 2005 – Special Permit filed Under Z.R. §§11-411 and 11-413 of the zoning resolution to request the instatement of an expired, pre-1961, variance, and to request authorization to legalize the change of use from a gasoline service station with accessory automotive repairs, to an automotive repair facility without the sale of gasoline, located in a C2-4/R7-1 zoning district.

PREMISES AFFECTED – 1236 Prospect Avenue, southeast corner of Prospect Avenue and Home Street, Block 2693, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #2BX

285-05-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Robert E. Benson, owner.

SUBJECT – Application September 13, 2005 - Pursuant to Section ZR 72-21 for a variance for the proposed enlargement of an existing one-family dwelling that will not provide the required front yard, ZR 23-45 and rear yard, ZR 23-47. The premise is located inan R1-2 (HS) Hillside Preservation District.

PREMISES AFFECTED – 34 Duncan Road, West side of Duncan Road 163' North of intersection with Theresa Place, Block 591, Lot 52, Borough of Staten Island,

COMMUNITY BOARD #1SI

301-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Jeanette Impaglia, owner.

SUBJECT – Application October 12, 2005 – Special Permit Under §73-36 to permit the operation of a Physical Culture Establishment on the second floor mezzanine of a building located within a C6-3X.

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 10, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meeting of the Board held on Tuesday morning and afternoon, October 25, 2005, as printed in the bulletin of November 3, 2005, Vol. 90, No. 44. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

7-51-BZ

APPLICANT – Eric Palatnik, P.C., for 6717 4th Avenue, LLC, owner.

SUBJECT – Application December 29, 2004 – Extension of Term/Waiver permitting in a business use district, Use Group 6, using more than the permitted area and to permit the parking of patron's motor vehicles in a residence use portion of the lot. The subject premises is located in an R-6/R7-1(C1-3) zoning districts.

PREMISES AFFECTED – 6717/35 Fourth Avenue, northeast corner of Senator Street, Block 5851, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening and an extension of the term of the previously granted variance pursuant to Z.R. §11-411; and

WHEREAS, a public hearing was held on this application on December 6, 2005, after due notice by publication in *The City Record*, and then to decision on January 10, 2006; and

WHEREAS, Community Board No. 10, Brooklyn, recommends approval of this application; and

WHEREAS, the premises is located on the northeast corner of Fourth Avenue and Senator Street; and

WHEREAS, the site is currently located partially within an R6 zoning district and partially within an R7-1 zoning district with a C1-3 overlay; and

WHEREAS, the premises is improved upon with an existing two-story commercial structure, with a drug store and laundromat on the ground floor and offices on the second floor;

and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1951, when, under the subject calendar number, the Board granted an application to permit the construction and maintenance of a business building with more than the permitted floor area, and to permit parking of patron's motor vehicles in the residence use portion of the lot for a term of ten years; and

WHEREAS, subsequently, this grant has been amended and extended by the Board at various times; and

WHEREAS, the most recent extension of term was granted on November 3, 1993, and expired on February 6, 2003; and

WHEREAS, upon a review of the application, the Board observed that violations had been issued to the premises by the Department of Buildings, and asked the applicant to address them; and

WHEREAS, the applicant responded that the violations arose because the laundromat that is currently located on the premises has no license from the Department of Consumer Affairs; the applicant noted that in order to obtain the license, the owner needs a new Certificate of Occupancy (CO) reflecting the as-of-right laundromat use, but cannot obtain its new CO until it receives an extension of time from the Board for the variance; and

WHEREAS, pursuant to Z.R. § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on May 22, 1951, as subsequently extended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from February 6, 2003, to expire on February 6, 2013, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received December 29, 2004'-(4) sheets, 'September 30, 2005'-(1) sheet and 'December 9, 2005'-(3)sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on February 6, 2013;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

(DOB Application No. 301881382)

Adopted by the Board of Standards and Appeals, January

MINUTES

10, 2006.

1016-84-BZ

APPLICANT – Martyn & Don Weston, for Livia Liberace, owner; Ultramotive, lessee.

SUBJECT – Application August 8, 2005 – Pursuant to Z.R. §11-411 for the Extension of Term of a previously approved Variance for the operation of an auto repair shop (UG12) with accessory uses and an Amendment to reestablish and legalize auto body and fender work on site. The premise is located in a C8-2 and R-5 OP zoning district.

PREMISES AFFECTED – 790-798 Coney Island Avenue, west side 260'-0 3/8 south of Cortelyou Road, Block 5393, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an amendment to the previously granted variance, and an extension of term pursuant to Z.R. §11-411; and

WHEREAS, a public hearing was held on this application on December 13, 2005, after due notice by publication in *The City Record*, and then to decision on January 10, 2006; and

WHEREAS, Community Board No. 12, Brooklyn, recommends conditional approval of this application; said conditions relate to the proposed reinstatement of the fender/body work and spray painting uses on the site; and

WHEREAS, the premises is located on the west side of Coney Island Avenue, south of Cortelyou Road; and

WHEREAS, the site is located partially within a C8-2 zoning district and partially within an R5 zoning district; and

WHEREAS, the premises is improved upon with an existing one-story plus mezzanine auto repair shop; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 20, 1948, when, under calendar number 64-58-BZ, the Board granted an application for the subject lot and two additional lots to permit in a residence and business district the occupancy of a garage for more than five vehicles, a gasoline service station, a motor vehicle repair shop, servicing of new and used motor vehicles, body and fender repairs, painting, spraying, welding, office and store; and

WHEREAS, subsequently, this grant has been amended and extended by the Board at various times; and

WHEREAS, on July 30, 1985, the Board approved, under the subject calendar number, the reestablishment of a portion of the variance on the subject lot for an automotive repair shop

with accessory use of acetylene torch and arc welding and spray painting, sale and display of new and used autos and storage of tow trucks and auto parts; and

WHEREAS, on March 31, 1998, the Board granted an extension of term to expire on July 30, 2005; and

WHEREAS, however, one of the conditions of this grant stated that no fender or body work nor spray painting of vehicles shall be conducted on the premises; this condition was listed at the request of the applicant, as they intended to cease such uses on the site and did not anticipate their reinstatement; and

WHEREAS, the applicant requests that the Board reestablish the body and fender work uses; and

WHEREAS, the applicant represents that the body and fender work will be located in the same area of the building that was approved for such use in prior Board grants; and

WHEREAS, the Board inquired as to ventilation in the building and the applicant responded that ventilation is achieved through an existing exhaust fan located on the roof; and

WHEREAS, the applicant also stated that there are no windows facing the adjacent residential uses in the R5 zoning district; and

WHEREAS, the applicant would also like to modify the hours of operation from 8AM to 5:30PM Monday through Friday and 8AM to 12PM Saturday to 8AM to 5:30PM Monday through Friday and 8AM to 12PM on both Saturday and Sunday; and

WHEREAS, the applicant also seeks a ten year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on July 30, 2005, as subsequently extended, so that as amended this portion of the resolution shall read: “to permit fender and body work and spray painting of vehicles on the premises, to allow a change in the hours of operation, and to extend the term for ten years from July 30, 2005, to expire on July 30, 2015, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received November 4, 2005’-(3) sheets and ‘December 22, 2005’-(1) sheet; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on July 30, 2015;

THAT the hours of operation shall be from 8AM to 5:30PM Monday through Friday and 8AM to 12PM Saturday and Sunday;

THAT all body and fender work shall occur only within the building in the area indicated on the BSA-approved plans;

THAT no more than two quarts of paint shall be sprayed per day;

THAT the front doors shall be kept closed while the premises are in operation;

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THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. Alt. 1790/84)

Adopted by the Board of Standards and Appeals, January 10, 2006.

122-93-BZ

APPLICANT – Adam Rothkrug, Esq., for Equinox Fitness Club, lessee; 895 Broadway LLC, owner.

SUBJECT – Application March 31, 2005 – Waiver of the rules, extension of term and amendment for a legalization of an enlargement to a physical cultural establishment that added 7, 605 square feet on the second floor and an addition of 743sq.ft on the first floor mezzanine.

PREMISES AFFECTED – 895/99 Broadway, W/S Broadway, 27’6”south of corner of East 20th Street, Block 648, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening to amend the resolution, and an extension of the term of the previously granted special permit that expired on September 20, 2004; and

WHEREAS, a public hearing was held on this application on December 6, 2005, after due notice by publication in *The City Record*, and then to decision on January 10, 2006; and

WHEREAS, Community Board No. 5, Manhattan, waived comment on this application; and

WHEREAS, the subject premises is located on the west side of Broadway, south of East 20th Street; and

WHEREAS, on September 20, 1994, the Board granted a special permit application pursuant to Z.R. § 73-36, to permit, in an M1-5M zoning district, the use of the cellar, first floor and mezzanine of the existing five-story commercial building as a

physical culture establishment (“PCE”); and

WHEREAS, the instant application seeks to: 1) extend the term of the special permit for ten years; and 2) amend the resolution to legalize the extension of the PCE use to the entire second floor and the mezzanine; and

WHEREAS, the applicant represents that prior to the expansion, the PCE occupied 10,188 sq. ft. of floor area in the cellar, 9,869 sq. ft. on the first floor, and 3492 sq. ft. on the mezzanine level; and

WHEREAS, the applicant states that after the expansion, the PCE also occupies 7,605 sq. ft. of floor area on the second floor; the applicant also states that it has modified the mezzanine to include an additional 743 sq. ft. of floor area, for at total of 4,235 sq. ft.; and

WHEREAS, the applicant represents that the hours of operation will continue to be: Monday through Thursday – 6 AM to 11 PM; Friday – 6 AM to 10 PM; and Saturday and Sunday – 8 AM to 9 PM; and

WHEREAS, the Board finds that a ten-year extension and the requested amendment is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated September 20, 1994, so that as amended this portion of the resolution shall read: “to permit the legalization of interior changes to the PCE including the expansion to the second floor of the building, and an extension of the term of the special permit for a term of ten years; *on condition* that the expansion shall substantially conform to drawings as filed with this application, marked ‘Received October 11, 2005’–(6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years from September 20, 2004, expiring September 20, 2014;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT a new Certificate of Occupancy for the premises shall be obtained by July 10, 2006;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 100659315)

Adopted by the Board of Standards and Appeals, January 10, 2006.

62-96-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 200 Madison Associates, LP, owner; New York Sports Club Inc., lessee.

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SUBJECT – Application March 31, 2005 - Amendment to legalize on the first floor the enlargement of a physical culture establishment and to allow the change in ownership. The premise is located in C5-2 zoning district.

PREMISES AFFECTED – 200 Madison Avenue, westerly block of Madison Avenue, between East 35th and East 36th Streets, Block 865, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an amendment to a previously approved special permit for a Physical Culture Establishment (“PCE”); and

WHEREAS, a public hearing was held on this application on November 1, 2005, after due notice by publication in *The City Record*, postponed December 6, 2005 and then to decision on January 10, 2006; and

WHEREAS, Community Board No. 5, Manhattan, waived comment as to this application; and

WHEREAS, the premises is located on the west side of Madison Avenue, between East 35th and East 36th Streets; and

WHEREAS, the site is located within a C5-2 zoning district; and

WHEREAS, the premises is improved upon with an existing 25-story commercial building; the PCE is located in portions of the cellar, first floor and mezzanine; and

WHEREAS, on February 4, 1997, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, allowing the subject PCE for a term of 10 years; and

WHEREAS, the applicant represents that the operator of the PCE expanded on the first floor without first obtaining approval of the Board; and

WHEREAS, specifically, the applicant states that the first floor gross floor area devoted to the PCE as approved was 4,474 sq. ft, and that the expansion has increased the gross floor area to 8,924 sq. ft.; and

WHEREAS, the applicant represents that the expansion was undertaken not as a result of an increase in membership, but to accommodate existing members; and

WHEREAS, the applicant also represents that the PCE has been acquired by a new owner/operator, and that approval of this change is also requested; and

WHEREAS, the Department of Investigation has performed a background check on the new corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be

satisfactory; and

WHEREAS, based upon the submitted evidence, the Board finds the requested legalization and change in operator/owner are appropriate.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on February 4, 1997, so that as amended this portion of the resolution shall read: “to permit the legalization of an expansion on the first floor of the facility, as well as a change in ownership and operator, *on condition* that the all work/site conditions shall substantially conform to drawings as filed with this application, marked ‘Received September 23, 2005’-(2) sheets and ‘December 19, 2005’-(3) sheets; *on further condition*:

THAT a new certificate of occupancy be obtained within one year from the date of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 101225620)

Adopted by the Board of Standards and Appeals, January 10, 2006.

213-96-BZ, Vol. III

APPLICANT – Slater & Beckerman, LLP, for 51 LLC, owner; Cheers of Manhattan, Inc., lessee.

SUBJECT – Application April 18, 2005 – Extension of Term/Waiver for an eating and drinking establishment with entertainment and dancing. The premise is located in an C4-5 zoning district.

PREMISES AFFECTED – 51-53 Christopher Street (a/k/a 113 Seventh Avenue South) Block 610, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of term of a special permit for a Use Group 12a Cabaret, as well as an amendment to the special permit to allow changes to exiting; and

WHEREAS, a public hearing was held on this application on November 1, 2005, after due notice by publication in *The*

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City Record, with continued hearings on December 6, 2005 and then to decision on January 10, 2006; and

WHEREAS, the site had an inspection by a committee of the Board, including Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, the site is located on the northeast corner of Seventh Avenue South, at the intersection with Christopher Street, and is located within a C4-5 zoning district; and

WHEREAS, it is improved upon with an existing two-story building occupied by a Use Group 6 eating and drinking establishment (the "Bar") on the first floor and a Use Group 12a Cabaret (the "Cabaret") on the second floor; and

WHEREAS, the Bar and the Cabaret are parts of the same establishment; the Bar is an as of right use; and

WHEREAS, the hours of operation of the Cabaret are: 10:30 PM to 4:00 AM, Wednesday through Monday; and

WHEREAS, the Board has exercised jurisdiction over the Cabaret since March 24, 1998, when, under the subject calendar number, it granted an application for a special permit under ZR § 73-244, which allowed the Cabaret on the second floor of the building, for a three year term; and

WHEREAS, this grant was extended on April 17, 2001 for another three year term; this term expired on March 24, 2004; and

WHEREAS, the Board granted the special permit on condition that the only entrance to the Cabaret be located at 113 Seventh Avenue South; and

WHEREAS, the applicant proposes: (1) an extension of term; and (2) an amendment to the permit; and

WHEREAS, specifically, the applicant requests that the Board approve a condition that, when the Cabaret is in operation, all patrons to both the Bar and the Cabaret will enter and exit on Seventh Avenue South; and

WHEREAS, the applicant also asks that the Board approve a condition that when the Cabaret is not in operation, the second floor may be used by the Bar and all patrons will enter and exit on Christopher Street; and

WHEREAS, Community Board No. 2, Manhattan, recommends disapproval of this application; and

WHEREAS, the Central Village Block Association also opposes this application; and

WHEREAS, both the Community Board and the Block Association state that the Cabaret had not been a good neighbor in terms of noise; and

WHEREAS, at hearing, the Board expressed concerns regarding the following: (1) the enforcement of the entrance from Seventh Avenue; (2) the need for appropriate signage indicating the hours of the Cabaret; (3) the potential need for security personnel posted at the two entrances; and (4) the community-based complaints about noise; and

WHEREAS, the applicant has agreed that a sign will be installed in the window of the Bar, indicating that during the hours of operation of the Cabaret, the entrance for both the Bar and the Cabaret will be on Seventh Avenue South; and

WHEREAS, the applicant has also agreed to the posting of security personnel at both the Christopher Street and Seventh

Avenue entrances; the security personnel will ensure that patrons will not congregate or block entrances to the premises; and

WHEREAS, in response to noise concerns, the applicant noted that the windows to the Cabaret are padlocked so that they can not be opened, and that plexiglass was added for further soundproofing; and

WHEREAS, in response to additional concerns regarding doors and emergency egress raised by the Vice-Chair, the applicant agreed to a notation on the plans indicating that the Christopher Street door will have a panic bar and alarm, and after 10:30 P.M., will be used for emergency egress only; and

WHEREAS, the applicant also stated that patrons needed to move freely between the Bar and the Cabaret, so the interior door between the uses would have a panic bar only, but no alarm; and

WHEREAS, at the request of the Board, the applicant re-addressed the special permit findings; and

WHEREAS, specifically, the applicant asserts that: (1) the waiting area is maintained in accordance with the requirements of the special permit and the Board's prior grant; (2) the entrance to the Cabaret, since it will be on Seventh Avenue South, is a minimum of 100 ft. from the nearest residential district boundary; (3) the Cabaret has not and will not cause undue vehicular or pedestrian congestion in local streets; (4) the essential character of the neighborhood is not impaired by the Cabaret; (5) the Cabaret will not cause the sound level in any adjacent lawful residential use to exceed Noise Code limits, due to appropriate soundproofing measures; and (6) the application is made jointly by the owner and the operators of the Cabaret; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term and amendment appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on July 30, 2005, as subsequently extended, so that as amended this portion of the resolution shall read: "to permit a modification of the special permit to include specific conditions, set forth below, and to extend the term for three years from March 24, 2004, to expire on March 24, 2007, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received December 22, 2005'-(2) sheets; and *on further condition*:

THAT the term of this grant shall be for three years from the last expiration date, to expire on March 24, 2007;

THAT the hours of operation of the Cabaret shall be limited to: 10:30 PM to 4:00 AM, Wednesday through Monday;

THAT a sign will be installed in the window of the first floor bar along the Christopher Street entrance, indicating that during the hours of operation of the second floor Cabaret, the entrance for both the bar and the Cabaret will be on Seventh Avenue South;

THAT security personnel shall be stationed at both the Christopher Street and Seventh Avenue entrances, to ensure that patrons do not congregate on the sidewalks near the entrances;

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THAT when the Cabaret is not in operation, the entrance to the Bar shall be on Christopher Street;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived or modified by the Board remain in effect;

THAT the premises shall be operated in compliance with the required conditions by February 10, 2005;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. Alt. 1790/84)

Adopted by the Board of Standards and Appeals, January 10, 2006.

206-04-BZ

APPLICANT – Steven M. Sinacori/Stadtmauer Bailkin, LLP, for Sephardic Community Youth Center, Inc., owners.

SUBJECT – Application September 27, 2005 – Reopening for an amendment to reflect the installation of additional security measures, the relocation of an outdoor play area, waiver of required parking and loading berths, changes to landscaping and a building projection. The premise is located in an R5 within Ocean Parkway Special District.

PREMISES AFFECTED – 1901 Ocean Parkway, fronting on Ocean Parkway, Avenue S and East 7th Street, Block 7088, Lots 1, 14, 15, 16 and 89, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Bowers.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance; and

WHEREAS, a public hearing was held on this application on December 23, 2004, after due notice by publication in *The City Record*, and then to decision on January 10, 2006; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the corner of Ocean Parkway and Avenue S, with frontage on East 7th Street, and has a total lot area of approximately 23,000 sq. ft.; and

WHEREAS, the zoning lot is comprised of the following

individual tax lots: 1, 14, 15, 16 and 89; and

WHEREAS, the site is located within an R5 zoning district (within the Ocean Parkway Special Zoning District); and

WHEREAS, the site is improved upon with a three and four story building, currently occupied by the Sephardic Community Center (the “Center”), a not-for-profit entity that serves youth, the elderly, and the Orthodox community by providing various educational, athletic, cultural and counseling services; and

WHEREAS, in 1978, under BSA Calendar No. 246-78-BZ, the Board granted a variance permitting the Center; and

WHEREAS, in 1989, under BSA Calendar No. 489-89-BZ, the Board granted a second variance permitting an enlargement and expansion of the building onto two newly acquired adjacent lots, in order to accommodate the Center’s programmatic needs; and

WHEREAS, construction under the 1989 grant did not take place, due to a poor economic climate and a resulting lack of construction funding; and

WHEREAS, in November of 2000, under BSA Calendar No. 166-00-BZ, the Board granted a third variance permitting another proposed enlargement of the building, again to accommodate the Center’s programmatic needs; and

WHEREAS, the Center did not want to pursue construction under the November 2000 grant, as the anticipated costs were high and would not allow for the continuation of Center activities during construction; and

WHEREAS, accordingly, on September 14, 2004, the Board granted a further application pursuant to Z.R. § 72-21 under the subject calendar number, to permit the proposed enlargement of the Center’s building, which did not comply with the zoning requirements for floor area, floor area ratio, lot coverage, rear yard and rear yard equivalents, and height and setback, contrary to Z.R. §§113-51, 113-544, 113-55, 23-631 and 23-141; and

WHEREAS, the applicant now seeks the following amendments, which are related to the programmatic needs of the Center: (1) the addition of precautionary security measures including a fence at the corner of Ocean Parkway and Avenue S, and the installation of pre-cast stone or metal benches for the open entrance plaza; (2) the relocation of the outdoor play area from street level to the roof, resulting in the extension of one stairway to provide a second means of egress, the extension of the elevator core, and the addition of an accessible rooftop bathroom, all of which results in a slight increase in floor area; (3) a waiver of the required parking; and (4) landscaping and a building projection that does not comply with the Special district requirements regarding landscaping and yards; and

WHEREAS, the applicant represents that the relocation of the playground and related extension of the elevator core and stairway will increase the total floor area by 769.8 sq. ft. from the previous grant; and

WHEREAS, the Board has reviewed the submitted plans, which reflect the installation of the additional security measures, the relocation of the playground to the rooftop, and the landscaping and projection, and finds that they are acceptable

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modifications to the approved plans in that they relate to the programmatic needs of the Center and are minor in nature; and

WHEREAS, the applicant represents that a parking requirement for the Center had not been raised by the Department of Buildings or in prior Board actions until the instant application was being contemplated and the oversight was discovered; and

WHEREAS, the applicant suggests that part of this oversight may be due to a 1984 certificate of occupancy that indicates that there is an approximately 8,000 sq. ft. open area for parking; however, the BSA-approved site plan does not show such an open area and the Center currently does not provide the required parking; and

WHEREAS, accordingly, the applicant now asks for a waiver of the applicable parking regulations; and

WHEREAS, at hearing, the Board expressed concern about the parking waiver, and asked the applicant for clarification as to any potential impact the waiver might have; and

WHEREAS, the applicant states that most of the Center's members live in close proximity to the facility, and that its membership and employee count is not increasing as a result of the proposed changes, thus minimizing the need for parking; and

WHEREAS, the applicant also states that senior citizens use the Center for longer periods of time than any other group, and primarily arrived by van service; very few drive their own vehicles to the Center; and

WHEREAS, additionally, the applicant's parking consultant states that there is no significant parking impact from the Center or the uses therein; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term and amendment appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on September 14, 2004, so that as amended this portion of the resolution shall read: "to permit the addition of security measures and non-complying landscaping, the relocation of a playground, and a waiver of parking requirements, *on condition* that all work shall substantially conform to drawings as filed with this application, marked 'Received January 4, 2006'-(13) sheets; and *on further condition*:

THAT all security measures and landscaping shall be installed and maintained as indicated on the BSA-approved plans;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not

related to the relief granted."

(DOB Application No. 301770509)

Adopted by the Board of Standards and Appeals, January 10, 2006.

780-45-BZ

APPLICANT – Anthony G. Mango, for Guiseppe Rapisardi and Ann Rapisardi, owners.

SUBJECT – Application June 23, 2005 – Pursuant to Z.R. §11-413 the legalization of the existing/proposed change of use within the same Use Group 16 from a beer storage of trucks to a plumbing contractor's establishment with storage of plumbing tools, equipment, supplies and the storage of equipment vans. The premise is located in an R6B zoning district.

PREMISES AFFECTED – 1818-1820 Bleecker Street, east side of Bleecker Street, 155' north of Seneca Avenue, Block 3435, Lots 21 and 22, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Anthony Mango and Giuseppe Rapisardi.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to February 14, 2006, at 10 A.M., for decision, hearing closed.

1005-66-BZ

APPLICANT – Moshe M. Friedman, P.E., for Chelsea Town Company, owner.

SUBJECT – Application November 22, 2005 – Request for a waiver of Rules of Procedure and reopening for the Extension of Term of a variance previously granted under Section 60(1b) of the Multiple Dwelling Law, which expired May 2, 2002, for transient parking of unused and surplus tenant spaces within the accessory garage. Transient parking is limited to twenty-two cars. The premise is located in an R8B zoning district.

PREMISES AFFECTED – 320 West 30th Street, a/k/a 314-322 West 30th Street, south side of West 30th Street, 202' west of 8th Avenue, Block 753, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to January 31, 2006, at 10 A.M., for decision, hearing closed.

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384-74-BZ

APPLICANT – Sheldon Lobel, P.C., for R. M. Property Management, Inc., owner.

SUBJECT – Application May 18, 2005 - Extension of Term of a public parking lot and an Amendment of a Variance Z.R. §72-21 to increase the number of parking spaces and to change the parking layout on site. The premise is located in an R4A zoning district.

PREMISES AFFECTED – 3120 Heath Avenue, southwest corner of Shradly Place, Block 3257, Lot 39, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith and Richard Marshall.

ACTION OF THE BOARD – Laid over to February 14, 2006, at 10 A.M., for continued hearing.

386-74-BZ

APPLICANT – Stadtmauer Bailkin/Steve Sinacori, for Riverside Radio Dispatcher, Inc., owner.

SUBJECT – Application October 19, 2005 – Reopening for an amendment to Z.R. 72-21 a Variance application to permit the erection of a one story building for use as an automobile repair shop which is not a permitted use. The proposed amendment pursuant to ZR 52-35 for the change of use from one non-conforming use (Automotive Repair Shop UG16) to another non-conforming use (Auto Laundry UG16) is contrary to the previously approved plans. The premise is located in C4-4 zoning district.

PREMISES AFFECTED – 4184/4186 Park Avenue, east side of Park Avenue, between East Tremont Avenue and 176th Street, Block 2909, Lot 8, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Richard Bowers and Luis Facunde.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to January 31, 2006, at 10 A.M., for decision, hearing closed.

43-99-BZ

APPLICANT – Windels Marx Lane and MittenDorf, LLP., for White Castle Systems, Inc., owner.

SUBJECT – Application November 22, 2005 – Extension of Term/Waiver/Amendment to a previously granted special permit for a drive-through facility accessory to an eating and drinking establishment for an additional term of five years. The amendment is to install and electronic amplification menu board. The premise is located in a C1-2 in an R-4 zoning district.

PREMISES AFFECTED – 38-02 Northern Boulevard, southwest corner formed by the intersection of Northern

Boulevard, Block 1436, Lot 1, Flushing, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Oliver Eichhorn and Jeanine Margiano.

ACTION OF THE BOARD – Laid over to February 14, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

53-05-A

APPLICANT – The Agusta Group, for Tom George, owner.

SUBJECT – Application filed on March 4, 2005 – Proposed construction of a three story residential and a four story mixed use building fronting Forest Avenue, which lies partially in the bed of a mapped street (Greene Avenue) which is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 62-41 Forest Avenue, East Side of Forest Avenue, 216’ of Metropolitan Avenue, Block 3492, Lot 25, 28, 55, 58, (tentative, Lot 25), Borough of Queens.

COMMUNITY BOARD#5Q

APPEARANCES –

For Applicant: I. Korman.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner, dated February 10, 2005, acting on Department of Buildings Application No. 402039487, reads:

“Proposed building located partially within the mapped but unimproved section of Greene Avenue is contrary to General City Law Section 35 and requires approval at the NYC Board of Standards and Appeals”; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in the *City Record*, and then to decision on January 10, 2006; and

WHEREAS, by letter dated November 4, 2005, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 15, 2005, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated December 8, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, Community Board 5, Queens, opposed this application, stating that is was concerned that the proposed development would be out of scale with the character of the community; and

WHEREAS, the Board notes that its grant herein only

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pertains to the ability to build within the bed of a mapped street, and that all construction must conform and comply with applicable zoning regulations; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 10, 2005, acting on Department of Buildings Application No. 402039487, is modified under the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; on condition that construction shall substantially conform to the drawing filed with the application marked "Received December 22, 2005"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

191-05-A/192-05-A

APPLICANT – Eric Palatnik, P.C., for Juliana Forbes, owner.

SUBJECT – Application filed on August 15, 2005 – Proposed construction of a two - two story, two family dwellings, which lies partially within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED – 12-09 116th Street, and 12-11 116th Street, at the intersection of 116th Street and 12th Avenue, Block 4023, Lots 44 and 45, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 10, 2005 acting on Department of Buildings Application Nos. 402188066 and 402188057, reads:

“Proposed new building in the bed of a mapped

street is contrary to General City Law Number 35; Refer to BSA requirements”; and

WHEREAS, a public hearing was held on this application on December 6, 2005 after due notice by publication in the *City Record*, and then to closure and decision on January 10, 2006; and

WHEREAS, by letter dated October 20, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated October 3, 2005, the Department of Transportation has reviewed the project and has recommended that the applicant provide the following: a ten foot side walk in front of the properties and adequate drainage facilities within the lots to prevent storm water draining into the street; and

WHEREAS, by letter dated December 27, 2005, the applicant states that it has agreed to the DOT recommendations and will provide the ten foot sidewalk in front of the properties and show sidewalks on the Builder’s Pavement Plan; and

WHEREAS, the applicant has also agreed to provide slope grades changes for site drainage internally to area drains and drywells on site, to prevent storm site water from draining into the street; and

WHEREAS, accordingly, the applicant revised the site plan to reflect the ten foot sidewalk and the drainage facilities; and

WHEREAS, by letter dated September 16, 2005, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 10, 2005, acting on Department of Buildings Application Nos. 402188066 and 402188057, is modified under the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; on condition that construction shall substantially conform to the drawing filed with the application marked "Received December 27, 2005"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

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376-04-A/377-04-A

APPLICANT – Robert A. Caneco, R.A., for Al Sala, owner.
SUBJECT – Application filed November 29, 2004 – to construct two one family homes with built in two car garage not fronting a legally mapped street is contrary Section 36, Article 3 of the General City Law.

PREMISES AFFECTED – 238 and 240 Billiou Street, s/s Billiou Street, 280.00’ west of Billiou Street and Arbutus Avenue, Block 6559, Lots 130 and 133.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert A. Canezo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to January 24, 2006, at 10 A.M., for decision, hearing closed.

319-05-A

APPLICANT – Gary Lenhart for Breezy Point Cooperative, owner Judith & Michael Scotko, lessee.

SUBJECT – Application November 2, 2005 – proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system located in the bed of a service lane is contrary to the Buildings Department Policy.

PREMISES AFFECTED – 5 Kildare Walk, E/S Kildare Walk 64.67 S/O Oceanside Avenue, Block 16350 part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to January 24, 2006, at 10 A.M., for decision, hearing closed.

324-05-BZY/348-05-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Perry Street Development Corp., c/o Richard Born, Hotel Wellington, owners.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. 11-332 for 2-story residential addition to an existing 6-story commercial building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A

(C1-5) and (C1-7).

PREMISES AFFECTED – 164-172 Perry Street, midblock portion of block bounded by Perry, Washington and West Streets and Charles Lane, Block 637, Lots 13 and 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary R. Tarnoff.

For Opposition: Andrew Berman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to January 31, 2006, at 10 A.M., for decision, hearing closed.

326-05-BZY/328-05-A

APPLICANT – Greenberg Traurig, LLP by Deirdre Carson, for 163 Charles St. Realty, LLC., owner.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. §11-331 for the alteration and enlargement of the building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A and (C1-5).

PREMISES AFFECTED – 163 Charles Street, lot fronting on Charles Lane between West and Washington Streets, Block 637, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: Andrew Berman and C. Corljo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to January 31, 2006, at 10 A.M., for decision, hearing closed.

Pasquale Pacifico, Executive Director.

Adjourned: 11:30 A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 10, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

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ZONING CALENDAR

296-04-BZ

CEQR #05-BSA-037M

APPLICANT – Sheldon Lobel, P.C., for 135 Orchard Street, Co., LLC, owner.

SUBJECT – Application August 30, 2004 – under Z.R. §72-21 to permit the legalization of the residential uses on floors two through five of an existing five-story mixed use building located in a C6-1 zoning district.

PREMISES AFFECTED – 135 Orchard Street, (a/k/a 134 Allen Street), between Delancey and Rivington Streets, Block 415, Lot 69, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Irv Minkin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
Negative:.....0
Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 7, 2005, acting on Department of Buildings Application No. 102666394, reads:

“The lot coverage exceeds that permitted by section 23-145 and 35-23 of the Zoning Resolution for Quality Housing”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within a C6-1 zoning district, the proposed legalization of a mixed-use residential/commercial building, which does not comply with Quality Housing zoning requirements for lot coverage, contrary to Z.R. §§ 23-145 and 35-23; and

WHEREAS, a public hearing was held on this application on February 15, 2005 after due notice by publication in the *City Record*, with continued hearings on May 10, 2005, and August 9, 2005, and then to decision on December 6, 2005; the decision was then deferred to January 10, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan, Vice Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board 3, Manhattan, and the Borough President recommend approval of this application; and

WHEREAS, the original version of this application requested relief from applicable Floor Area Ratio (FAR), Open Space Ratio (OSR), and interior density requirements, set forth at ZR §§ 23-142, 35-23, 23-22 and 35-40, based upon a height-factor zoning analysis; and

WHEREAS, after taking instruction from the Board, the applicant modified the application to: (1) decrease the amount of units from 14 to 11; and (2) reflect a Quality Housing development and analysis; these two changes reduced the amount of variances to only the requested lot coverage waiver; and

WHEREAS, the site is a through lot located between Orchard and Allen Streets, on the block bounded by Delancey and Rivington Streets; and

WHEREAS, the site is 25’ wide by 87’-7” deep, and has a total lot area of 2,189 sq. ft.; and

WHEREAS, the site is improved upon with a five-story, 49’-1” high mixed-use residential/commercial building, with ground floor retail, and currently 14 residential units on floors two through five; and

WHEREAS, the applicant represents that the site was previously occupied by a five-story Old Law Tenement; and

WHEREAS, the applicant states that in 1934, floors two through five were removed; and

WHEREAS, the applicant further states that in 1999, DOB approved plans for the restoration of these floors, with a 14 ft. extension at the second floor; the plans reflected 14 Use Group 2 residential units; and

WHEREAS, a permit was issued and work was completed in January 2002; and

WHEREAS, a subsequent DOB audit revealed that the building as constructed did not comply with applicable OSR requirements; and

WHEREAS, the applicant states that in December of 2003, DOB authorized a waiver of the OSR objection in conjunction with a change in use from Use Group 2 residences to Use Group 5 hotel, and also allowed construction of an additional floor; and

WHEREAS, however, a hotel was not deemed financially feasible due to lease termination issues, as well as structural alteration issues that would arise from the need to create certain public areas required in hotels; and

WHEREAS, the applicant subsequently filed the instant variance application, seeking relief from the OSR requirement, as well as the above-mentioned FAR and interior density requirements; and

WHEREAS, after modifying the initial application to eliminate all but the lot coverage waiver request, the applicant now proposes the legalization of a building with the following bulk parameters: (1) an FAR of 4.37 (6.0 is the maximum permitted); (2) a total floor area of 9,575 sq. ft. (13,137 sq. ft. is the maximum permitted); (3) eleven dwelling units (a permitted amount); (4) a height of 49’-1” (60’-0” is the maximum permitted); and (5) a non-complying lot coverage of 100% at the second floor, and 84% on the remaining floors (65% is the maximum permitted); and

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WHEREAS, the Board observes that the proposed uses – residential and commercial – are permitted on the site because the C6-1 zoning district is an R7 zoning district equivalent for residential purposes; and

WHEREAS, thus, the use and bulk of the building will comply with applicable zoning parameters, except for Quality Housing lot coverage regulations; and

WHEREAS, the applicant has presented various arguments in support of the claim that the site suffers from unique physical conditions that prevented compliance with the applicable bulk regulations; and

WHEREAS, specifically, the applicant states that: (1) the site was previously occupied by a multiple dwelling with bulk comparable to that being requested in the instant application; (2) the proposed bulk of the building is comparable to that of adjacent buildings; (3) other conforming uses allowed in the subject zoning district would impose greater loads on the party walls, necessitating the installation of columns that would decrease first floor sales area; and (4) vast expenditures were made in good faith reliance upon the initial building permit; and

WHEREAS, leaving aside the factual accuracy of these various arguments, the Board finds that none of the claimed bases of uniqueness has a nexus with the requested lot coverage relief; and

WHEREAS, instead, the Board finds that it is the site's narrowness (25'-0" in width) and shallowness (87'-7" in depth) and the fact that it is a through lot that makes compliance with the applicable lot coverage provisions difficult; and

WHEREAS, the Board notes that typically through lots are 200'-0" in depth; and

WHEREAS, the Board also notes that because the site is a through lot, no rear yard is required; and

WHEREAS, however, if the applicant complied with the Quality Housing lot coverage requirements, open space would exist on the site; and

WHEREAS, this open space would meet the definition of an "outer court" as set forth in Z.R. §12-10; and

WHEREAS, this definition reads: "an 'outer court' is any open area, other than a yard or portion thereof, which is unobstructed from its level to the sky and which, except for one opening upon (a) a front lot line; (b) a front yard; (c) a rear yard; or (d) any open area along a rear lot line, or along a side lot line having a width or depth of at least 30 feet, and which open area extends along the entire length of such rear or side lot line; and is bounded by the building walls, or building walls and one or more lot lines other than a front lot line."; and

WHEREAS, here, if a building fronting on Allen Street was built with complying lot coverage and a complying street wall, an area that meets the definition of "open court" would result on the Orchard Street side; and

WHEREAS, however, the "open court" would only be 25 ft. wide due to the width of the lot, and thus it would be subject to special outer court regulations for narrow lots set forth at Z.R. § 23-841; and

WHEREAS, Z.R. §23-841 provides that in an R7

equivalent district, "if an outer court is less than 30 ft. wide, the width of such outer court shall be at least one and one-third the depth of such outer court; and

WHEREAS, thus, any outer court has a required depth of at least 18 ft., which could not be achieved on the site if the development complied with the maximum lot coverage; and

WHEREAS, since DOB can not permit the creation of a non-complying outer court, the applicant requires lot coverage relief; and

WHEREAS, the Board notes that that this analysis holds true regardless of the street wall location; and

WHEREAS, pursuant to Z.R. §35-24(b), for a mixed-use building with a Quality Housing residential component, at least 70% of the aggregate width of street walls shall be located within eight feet of the street line; and

WHEREAS, whether the street wall was located on the street line, eight feet off of the street line, or at some point in between, if a building was developed with complying lot coverage, a non-complying outer court would be created; and

WHEREAS, the Board further observes that while a pure residential building could be developed without regards to the mixed-use building street wall requirement, such a building would be severely under-built in terms of floor area due to the applicable lot coverage requirement; a pure residential building, as discussed further below, would not be financially viable; and

WHEREAS, finally, the Board observes that the narrowness and depth of the lot also makes compliance with height-factor zoning impractical since the limits of the lot width make any open space non-complying; and

WHEREAS, accordingly, the Board finds that the site's width, depth and status as a through is a unique physical conditions that creates practical difficulties and unnecessary hardship in developing the site in strict compliance with applicable zoning regulations; and

WHEREAS, since the Board finds this basis of uniqueness sufficient to sustain the uniqueness finding, the Board declines to address the applicant's good faith reliance argument; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following three complying development scenarios: (1) a complying transient hotel, with a retail component; (2) a complying commercial office building with ground floor retail; and (3) a complying residential building with ground floor retail; and

WHEREAS, at hearing, the Board asked for a more refined study, analyzing a broader range of scenarios, and not including in the analysis those costs related to the demolition of the existing non-complying building; and

WHEREAS, in response, the applicant submitted a revised study analyzing the following four scenarios: (1) a three-story "walk-up" apartment building; (2) a four-story "walk-up" apartment building; (3) a six-story residential elevator building; and (4) a seven-story residential elevator building; and

WHEREAS, the study, which did not include demolition costs, concluded that none of these scenarios

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realized a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that development in strict compliance with applicable zoning provisions will provide a reasonable return; and

WHEREAS, the applicant represents that the proposal, if granted, will not affect the character of the neighborhood, impair adjacent uses, nor be detrimental to the public welfare; and

WHEREAS, the applicant states that the neighborhood surrounding the site is comprised of mixed-use buildings, with ground floor retail use and upper floor residential use; and

WHEREAS, the applicant further states that the other multiple dwellings in the area all have lot coverages of between eighty and one hundred percent; and

WHEREAS, the Board observes that aside from the lot coverage non-compliance, the building complies and conforms in all respects to the requirements of the subject zoning district, and that legal light and air to the units is not compromised; and

WHEREAS, the Board observes that although the applicant constructed the building prior to filing the instant variance application, the hardship relates to the width, depth and through lot status of the site rather than the existing building; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant reduced the amount of units and modified the zoning analysis, such that the only waiver requested is for Quality Housing lot coverage; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BS037M, dated November 30, 2004; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration in accordance with 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under Z.R. §72-21, to permit, within a C6-1 zoning district, the proposed legalization of a mixed-use residential/commercial building, which does not comply with Quality Housing zoning requirements for lot coverage, contrary to Z.R. §§ 23-145 and 35-23; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 28, 2005"--(11) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: (1) a commercial FAR of 1.0; (2) a residential FAR of 3.37; (3) a total FAR of 3.37; (4) a lot coverage of 100% at the second floor, and 84% on the third through fifth floors; (5) eleven dwelling units; and (6) a height of 49'-1";

THAT the interior layout and all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT recreation space and street trees shall be provided as indicated on the BSA-approved plans;

THAT the proposed building shall comply with all applicable Quality Housing provisions, as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

344-04-BZ

APPLICANT – Alfonso Duarte, for NWRE 202 Corp., owner.

SUBJECT – Application October 20, 2004 – under Z.R. §72-21 – proposed use of an open lot for the sale of new and used automobiles, located in a C2-2 within an R3-2 zoning district, is contrary to Z.R. §32-25.

PREMISES AFFECTED – 202-01 Northern Boulevard, northeast corner of 202nd Street, Block 6263, Lot 29, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Alfonso Duarte.

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ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 18, 2004, acting on Department of Buildings Application No. 401624444, reads:

“Proposed use of open lot for sale of automobiles contrary to Sect. 32-25 Z.R.”; and

WHEREAS, a public hearing was held on this application on September 27, 2005 after due notice by publication in the *City Record*, with continued hearings on November 15 and December 13, 2005, and then to decision on January 10, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board No. 11, Queens, recommends disapproval of this application; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, in a C2-2 zoning district within an R3-2 zoning district, the proposed use of an open lot for the sale of new and used automobiles, contrary to Z.R. § 35-25; and

WHEREAS, the premises is located on the northeast corner of Northern Boulevard and 202nd Street; and

WHEREAS, the subject zoning lot is a trapezoidal-shaped lot with frontages of approximately 72 ft. on 202nd Street and approximately 95 ft. on Northern Boulevard, and has a total lot area of approximately 8,252 sq. ft.; and

WHEREAS, on February 16, 1965, the Board approved a variance for the site to permit the maintenance of an automotive sales lot in conjunction with a proposed automotive retail establishment for a term of five years; and

WHEREAS, the variance was extended for a term of ten years on February 16, 1970; and

WHEREAS, on October 28, 1980, the Board denied a further extension of the term of the variance; the resolution states that the Board requested at several public hearings that the premises be cleaned of debris and weeds and that a full width sidewalk be installed on Northern Boulevard and 202nd Street before a decision be made; and

WHEREAS, the applicant represents that the lot and sidewalk on 202nd Street is now cleared of weeds and debris and that a full width sidewalk was installed on Northern Boulevard; and

WHEREAS, the applicant represents that the property has been used sporadically since the 1980 denial; in 1985, it was used as additional parking for an adjacent convenience store for a term of two-and-one-half years; in 1995, it was used to store inventory for an automobile showroom located across the street for six years; and in 2002, it was leased to a car dealer located

across the street for storage of vehicles; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the zoning lot, which create practical difficulties and unnecessary hardship in developing the site with a conforming use: (1) the lot is small and irregularly shaped; (2) the lot is located on an arterial highway; and (3) the lot has a history of development consistent with the proposed use; and

WHEREAS, the applicant represents that due to the small size of the lot and its irregular shape, the lot is not conducive for commercial uses that prevail in the area (i.e., establishments with drive-thru facilities); and

WHEREAS, specifically, the applicant represents that the owner was contacted by a fast-food restaurant interested in leasing the property, but the restaurant declined to enter into a lease because it determined that due to the site’s small size and irregular shape it was not feasible to construct a drive-thru facility on the site; and

WHEREAS, the Board asked the applicant to provide additional information about the sizes of sites surrounding the subject lot; and

WHEREAS, in response, the applicant submitted a survey of 15 sites located along Northern Boulevard; the survey reflects that most of the sites are at least 10,000 sq. ft., and the few sites that are similarly-sized are rectangular rather than trapezoidal; in addition, only two of the sites surveyed are vacant; and

WHEREAS, the applicant also notes that the Board granted a variance on this lot in the past, and as part of such grant the Board determined that the site was unique; and

WHEREAS, the Board notes that since 1965, the property has been actively used as an automotive sales lot or for parking/storage for a total of approximately 27 years; and

WHEREAS, accordingly, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the entire site in strict conformity with current zoning; and

WHEREAS, the applicant represents that after the Board denied an extension of the variance in 1980, the owner placed a “Build to Suit” sign on the premises, but only received calls from persons who desired to use the property for the sale of automobiles; and

WHEREAS, the applicant further represents that the property was unsuccessfully listed with brokers for a period of approximately ten years; and

WHEREAS, the applicant has submitted letters from two local real estate agents that state that in their opinion a feasible use of the subject property is for automotive sales, due to the configuration of the lot and the limited opportunity for accessory parking on-site if a building were to be constructed; and

WHEREAS, the applicant has also submitted the addresses of six new buildings currently being erected along Northern Boulevard; the buildings are all being constructed on lots between approximately 10,000 sq. ft. and 20,000 sq. ft. in lot area; and

WHEREAS, the applicant has submitted a feasibility

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study analyzing an as-of-right one-story commercial building; the study states that such a conforming building would not result in a reasonable return; and

WHEREAS, the Board initially questioned the comparables which were used in the feasibility study; the applicant responded that a search of public records revealed that only three verifiable vacant land sales within two miles of the site had occurred within the last two years; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in conformance with the use provisions applicable in the subject zoning district will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance, if granted, will not negatively impact the character of the community; and

WHEREAS, the applicant represents that Northern Boulevard is an arterial highway and that at least five businesses near the site on Northern Boulevard between Francis Lewis Boulevard and the Clearview Expressway sell new and used cars; and

WHEREAS, the applicant has submitted a land use map that shows that the subject site is surrounded by automotive sales uses and other commercial uses, except for a residential use abutting a small portion of the site at the rear; and

WHEREAS, the applicant represents certain recommendations made by the zoning committee of the Community Board will be implemented, including the following: install new sidewalk; no repairs or servicing of autos on the site; washing of cars to be limited to keeping cars clean and will be done by hose and hand; no gas pumps will be installed; maximum number of cars on-site shall be limited to 30; hours of operation shall be from 10AM to 6PM Monday through Saturday; barbed wire or razor wiring will not be installed and any existing barbed or razor wire will be removed; and the lot will be kept free of dirt and debris; and

WHEREAS, the applicant has also agreed to a ten year term; and

WHEREAS, the Board finds that the subject application, if granted, will not alter the essential character of the surrounding neighborhood or impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, accordingly, the Board finds that the hardship herein was not self-created by the owner or a predecessor in title; and

WHEREAS, this proposal is the minimum necessary to afford relief; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant

information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA125Q dated June 25, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. § 72-21, to permit, in a C2-2 zoning district within an R3-2 zoning district, the proposed use of an open lot for the sale of new and used automobiles, for a term of ten years from January 10, 2006, to expire on January 10, 2016, contrary to Z.R. § 35-25; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received December 19, 2005"-(1) sheet; and *on further condition*:

THAT this variance shall be for a term of ten years, to expire on January 10, 2016;

THAT the maximum number of cars permitted on-site is 30;

THAT the hours of operation shall be from 10AM to 6PM Monday through Saturday;

THAT no repairs or servicing of automobiles shall take place on site;

THAT washing of cars shall be conducted only by hose and hand;

THAT no gas pumps shall be installed on the site;

THAT barbed wire or razor wiring will not be installed and any existing barbed or razor wire will be removed;

THAT the lot shall be kept free of dirt and debris;

THAT lighting shall be directed away from all residences;

THAT sidewalks shall be installed as indicated on the BSA-approved plans, and maintained in good repair

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the existing curb cut on 202nd Street shall be eliminated and the curb restored;

THAT the size and location of the proposed office

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trailer shall be as approved by the Department of Buildings;

THAT the layout of the property, location and size of the curb cut and fence shall be as approved by the Department of Buildings;

THAT all signage shall comply with C1-2 zoning regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

380-04-BZ

APPLICANT – Sheldon Lobel, P.C., for BK Corporation, owner.

SUBJECT - Application November 29, 2004 – under Z.R. §72-21 to permit the legalization of the conversion of one dwelling unit, in a new building approved exclusively for residential use, to a community facility use, in an R5 zoning district, without two side yards, is contrary to Z.R. §24-35.

PREMISES AFFECTED – 32-12 23rd Street, bounded by 33rd Avenue and Broadway, Block 555, Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Irvine Minkin and Thomas Cusanelli.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

Adopted by the Board of Standards and Appeals, January 10, 2006.

399-04-BZ

CEQR #05-BSA-077M

APPLICANT – Greenberg Traurg LLP, by Jay A. Segal, for Hip-Hin Realty Corp., owner.

SUBJECT – Application December 23, 2004 – under Z.R. §§72-21 and 73-36 – Proposed use of the subcellar for accessory parking, first floor and cellar for retail, and the construction of partial sixth and seventh stories for residential use, also a special permit to allow a physical culture establishment on the cellar level, of the subject premises, located in an M1-5B zoning district, is contrary to Z.R. §42-14(D), §13-12(a) and §73-36.

PREMISES AFFECTED – 425/27 Broome Street, southeast corner of Crosby Street, Block 473, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Melaney McMornly.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 27, 2005, acting on Department of Buildings Application No. 103670029, reads:

1. The proposed addition of new 6th and 7th floors for residential use of Joint Living Work Quarters for Artists (Use Group 17D) in M1-5B is not permitted and is contrary to Z.R. 42-14(D).
2. The proposed change in use on the first floor from a “Wholesale Establishment” (Use Group 16) to “Retail Use” (Use Group 6) in M1-5B is not permitted and is contrary to Z.R. 41-14(D).
3. The proposed Physical Culture Establishment on first floor and cellar requires BSA approval as per Z.R. 73-36.
4. The proposed accessory parking is not permitted and is contrary to Z.R. 13-12(a).”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a lot within an M1-5B zoning district: (1) the proposed construction of partial sixth and seventh stories on an existing five story plus mezzanines, cellar and sub-cellar building, to be occupied by Joint Living Work Quarters for Artists (Use Group 17D) (“JWLQA”); (2) use of the first floor and cellar level for retail use (Use Group 6); and (3) use of the sub-cellar for 10 accessory parking spaces, contrary to Z.R. §§ 42-14(D), 41-14(D), and 13-12(a); and under Z.R. § 73-36, to

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permit a Physical Culture Establishment (“PCE”) at the cellar level; and

WHEREAS, a public hearing was held on this application on July 26, 2005, 2005, after due notice by publication in the *City Record*, with continued hearings on September 13, 2005, October 18, 2005, and November 29, 2005, and then to decision on January 10, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located at the southeast corner of Broome and Crosby Streets, and consists of a 50 by 100 ft. corner lot and a 50 by 19 ft. interior lot, with a total lot area of 5,991 sq. ft.; and

WHEREAS, the site has 50’1” of frontage on Broome Street and 119’-1” of frontage on Crosby Street; and

WHEREAS, the property is currently improved upon with a five-story building, with a non-complying Floor Area Ratio (“FAR”) of 5.16, with the following legal uses: sub-cellar – “agriculture (bean sprout farm)”; cellar, first floor and first floor mezzanine – “wholesale uses”; and floors two through five – “JLWQA, with accessory storage on each of the mezzanines”; and

WHEREAS, the applicant represents that the ground floor, cellar and sub-cellar are currently vacant; and

WHEREAS, the applicant further represents that the upper floors contain ten JWLQA units, which are considered lawful non-conforming uses due to the date that the building was converted; and

WHEREAS, the applicant states that only two of the units are currently occupied, and both have rent stabilized Interim Multiple Dwelling status; and

WHEREAS, the applicant proposes to enlarge the existing building by approximately 6,730 gross sq. ft. through the addition of partial sixth and seventh stories; the sixth floor will also have a mezzanine; and

WHEREAS, the applicant represents that the increase in gross floor area would result from the reallocation of zoning floor area from the elimination of the first floor mezzanine, and floor space from the elimination of portions of the second and third floor mezzanines and the entire fourth and fifth floor mezzanines; and

WHEREAS, the applicant states that this increase in gross floor area results in an increase in zoning floor area of 4,713 sq. ft. to 35,630 sq. ft. overall, for a resulting FAR of 5.94; and

WHEREAS, the building once enlarged will have seven stories, a streetwall height of 78’-6”, a total height of 126-2 ½” (including bulkheads and towers); fifth floor setbacks of 10’-0” on Crosby and 15’-0” on Broome, and twelve dwelling units, all of which will be categorized as UG17 JWLQ; and

WHEREAS, ten accessory parking spaces will be located in the sub-cellar level; and

WHEREAS, the cellar and ground floor will be occupied

by a spa-type PCE, offering Use Group 6 hair and beauty services on the first floor and massage services in the cellar; and

WHEREAS, the proposed building will require the following waivers: a use waiver for the newly created JWLQA units on the proposed sixth and seventh floors (JWLQAs, while permitted as of right in M1-5B zoning districts, may not be created in new floor area); a use waiver for the Use Group 6 hair salon on the first floor and cellar levels (retail uses are not permitted below the second floor in M1-5B zoning districts); and a parking waiver to create the 10 accessory parking spaces in the sub-cellar (none are permitted as of right); and

WHEREAS, additionally, a special permit is required for the PCE; and

WHEREAS, the applicant states that because the existing building is adjacent to the Soho Cast Iron Historic District, the NYC Landmarks Preservation Commission (LPC) and the owner agreed that the enlargement of the building would proceed as if the building were a designated landmark; and

WHEREAS, thus, the two proposed stories are setback so that they are only minimally visible; additionally, the façade and fenestration will be reconstructed in a manner approved by LPC; and

WHEREAS, finally, the applicant represents that the owner of the subject premises has agreed to execute and record a light and air easement against the property to protect the light and air of the adjacent building at 423 Broome Street; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the building has structural problems that primarily are the result of the hydroponic bean sprout farm that existed in the cellar and sub-cellar for approximately twenty years, as well as the installation of oversized rooftop water tanks; (2) mold exists in the lower levels of the building, again as a result of the bean sprout farm; (3) the building has only one elevator, which is obsolete and non-functioning; (4) the building has a structurally unsound wooden stair layout that reduces usable floor area; and (5) the LPC imposed requirements as to façade treatment; and

WHEREAS, as to the first and second bases of uniqueness, the applicant states that the bean sprout operation excavated the existing concrete floor by 12” in order to increase the height of the ceiling, and dug draining trenches in the floor of the sub-cellar; and

WHEREAS, the applicant has submitted a letter from its engineering consultant that explains that significant leakage occurred from the trench system, which allowed water to filter into the sand below the building; and

WHEREAS, this leakage in turn resulted in erosion of the soil, which caused the wooden ceiling beams to separate from the building walls, and also caused cast iron beams on the first floor to separate; and

WHEREAS, these structural elements were already compromised due to the extensive mold growth that occurred because of the moist environment that the bean sprout operation required; and

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WHEREAS, the applicant estimates that remedying these problems will cost approximately 1.2 million dollars; and

WHEREAS, as to the third basis of uniqueness, the applicant states that the elevator is an obsolete hydro-powered model that has not functioned for over 25 years, and which even if rehabilitated, could not support conforming uses; and

WHEREAS, in support of the contention that the elevator may properly be considered a contributing unique hardship, the applicant cites to past Board cases where the Board found that obsolete elevators were part of the hardship; and

WHEREAS, as to the fourth basis of uniqueness, the applicant states that the existing wood stairwell does not comply with modern Building Code standards, and, because of the structural damage, a replacement stair must be built upon an entirely new structural support system; and

WHEREAS, the applicant further states that the location of the stair in a long hallway running along the western wall of the building uses up a significant amount of floor area that could otherwise be used; and

WHEREAS, as to the fifth basis of uniqueness, the applicant states that the LPC-imposed façade improvements result in a significant premium cost over and above what the owner would have spent had no such requirements been imposed; specifically, the applicant states that the differential costs for the façade treatment and fenestration total approximately \$620,000; and

WHEREAS, the Board initially questioned these alleged bases of unique hardship, in that certain of them appeared to represent mere maintenance issues common to most buildings of comparable age and condition in the neighborhood; and

WHEREAS, however, the applicant subsequently submitted a more refined statement of facts and findings that went into specific detail as to why the cited conditions were in fact unique to the building and should be considered actual hardships; as discussed above, the applicant also submitted testimony from an engineer and the owner in support of these contentions; and

WHEREAS, the Board has reviewed the new statement and the supporting documentation and agrees with the applicant that the cited conditions are unique and do impose a hardship in using the building for a conforming development in terms of the premium costs that must be incurred to address them; and

WHEREAS, the Board further observes that the applicant has shown that the cited unique factors and resulting hardship costs are not related to the rehabilitation of the building or ongoing maintenance; and

WHEREAS, finally, the Board notes that the parking waiver accommodates an accessory parking garage that increases overall revenue from the project, thereby addressing the cited hardship costs; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility

study analyzing the following as-of-right scenario: the renovation of the existing five-story building, with commercial use on the first floor and first floor mezzanine levels, and JWLQA units on the second through fifth floors; and

WHEREAS, the applicant concluded that such a scenario would result in a loss; and

WHEREAS, however, the Board had concerns regarding certain aspects of this study; and

WHEREAS, specifically, the Board questioned whether the analysis of the site valuation should reflect a reduction of the value of the existing mezzanine areas, given that they are not full floors; and

WHEREAS, the applicant revised the analysis and valued the mezzanines at 75% of the value of the non-mezzanine areas, which reduced the site valuation; and

WHEREAS, the Board also asked the applicant to address whether the reduced value of the existing IMD units should have been accounted for in the site valuation; and

WHEREAS, the applicant responded that it assumed full market value for the IMD units in calculating return, even though such value was not achieved; therefore, the applicant did not feel it was appropriate to modify the site valuation to reflect their lesser actual value; and

WHEREAS, the Board also requested that the cost of, and the profit to be derived from, the sub-cellar parking be folded into the feasibility study for the proposal; and

WHEREAS, the applicant showed that the parking facility would be a profitable aspect of the project, in light of the construction costs related to the parking facility and the anticipated operating income; and

WHEREAS, finally, at the request of the Board, the applicant, in order to demonstrate the need for the requested variance, prepared a comparative analysis of an alternative non-conforming development with and without the inclusion of the above-mentioned hardship costs; and

WHEREAS, this analysis showed that without the hardship costs, this alternative non-conforming development would in fact be a viable development scenario; however, when the costs were included, such a scenario was not viable; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed addition will be setback from the streets such that it will only be visible from the rear of the building; and

WHEREAS, the applicant also notes that the building will be rehabilitated in terms of façade and fenestration as if it were a designated landmark, with the approval of LPC and local landmark advocacy groups; and

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WHEREAS, the applicant further states that the introduction of two new JLWQA units and ten parking spaces will not negatively impact the character of the neighborhood or create any adverse impacts, and is consistent with the scale of, and uses in, the neighborhood; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, during the course of the hearing process, the Board asked the applicant to provide a financial analysis of an alternative scenario, which was a six-story building that would retain the floor area that would have been used for a seventh floor as mezzanines; the applicant analyzed such a scenario and concluded that it would not generate a viable return; and

WHEREAS, the Board also observed that an earlier version of the proposal included a seventh floor mezzanine in a building with a greater total FAR; at the request of the Board, this mezzanine was reduced; and

WHEREAS, accordingly, the Board further finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, additionally, the applicant has addressed the findings required by ZR § 73-36 for the PCE special permit; and

WHEREAS, specifically, the applicant states that the PCE will have facilities for a variety of body treatment and beauty services including manicure, pedicure, facials, waxing and massage; and

WHEREAS, the applicant states that all masseurs and masseuses employed by the facility are New York State licensed masseurs and masseuses; and

WHEREAS, the applicant states that the spa will be located partially on the ground floor, which is comparable to many other buildings in the area, which also have ground floor retail uses; and

WHEREAS, the applicant cites to the adjacent building on Broome Street, which has a clothing store on the ground floor, as well as the next building, the ground floor of which is being renovated for retail use; and

WHEREAS, the applicant also states that there are other PCEs in the SoHo neighborhood; and

WHEREAS, accordingly, the Board finds that the grant of the special permit will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA077M dated December 22, 2004; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. § 72-21 and grants a variance to permit, on a lot within an M1-5B zoning district: (1) the proposed construction of partial sixth and seventh stories on an existing five story plus mezzanines, cellar and sub-cellar building, to be occupied by Joint Living Work Quarters for Artists (Use Group 17D) (“JWLQ”); (2) use of the first floor and cellar level for retail use (Use Group 6); and (3) use of the sub-cellar for 10 accessory parking spaces, contrary to Z.R. §§ 42-14(D), 41-14(D), and 13-12(a); and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 and grants a special permit for a Physical Culture Establishment at the cellar level, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received December 27, 2005”-(5) sheets and “Received January 6, 2006”-(8) sheets; and *on further condition*:

THAT the term of the special permit grant shall be for ten years, from January 10, 2006, expiring on January 10, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

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THAT the hours of operation shall be limited to 10AM to 9 PM daily;

THAT all massages shall be performed by New York State licensed individuals only;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance as to the physical culture establishment shall be as reviewed and approved by DOB;

THAT fire safety measures in the physical culture establishment, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans and approved by DOB;

THAT the following shall be the bulk parameters of the proposed building: a residential FAR of 5.14; a commercial FAR of 0.8; a total FAR of 5.94; seven stories; a street wall height of 78'-6"; a total height of 126-2 1/2" (including bulkheads and towers); twelve dwelling units; fifth floor setbacks of 10'-0" on Crosby Street and 15'-0" on Broome Street; and ten parking spaces in the sub-cellar;

THAT all mechanical deductions shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

48-05-BZ

CEQR #05-BSA-103M

APPLICANT – Wachtel & Macyr, LLP for Bethune West Associates, LLC, contract vendee.

SUBJECT – Application March 2, 2005 – under Z.R. §72-21 to construct a 16- and 3-story mixed use development with 60 accessory parking spaces in an M1-5 district, contrary to Z.R. §42-00 and Z.R. §13-12.

PREMISES AFFECTED – 469 West Street, bounded by Bethune Street and West 12th Street, Block 640, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jerry Johnson.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION -

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 1, 2005, acting on Department of Buildings Application No. 104044133, reads:

“The proposed mixed use building located on a zoning lot divided by a district boundary between a C1-7A zoning district and a C1-6A zoning district does not comply with the bulk regulations regarding floor area ratio (ZR 23-145, 33-122, 35-31) lot coverage (ZR 23-145) side yards (ZR (23-46, 33-35) and height and setback (ZR 23-633, 33-431, 35-24) and provides for accessory off-street parking spaces that exceeds that permitted by the Resolution (ZR 13-12).”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a lot partially within a C1-7A zoning district and partially within a C1-6A zoning district, the proposed construction of a fifteen and three story mixed-use residential/commercial building, with ground floor retail and an underground accessory parking garage, which does not comply with applicable requirements for floor area ratio (“FAR”), lot coverage, side yards, height and setback, and off-street parking, contrary to Z.R. §§ 23-145, 33-122, 35-31, 23-46, 33-35, 23-633, 33-431, 35-24 and 13-12; and

WHEREAS, a public hearing was held on this application on September 28, 2005, after due notice by publication in the *City Record*, with continued hearings on November 2, 2005, November 29, 2005 and then to decision on January 10, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin; and

WHEREAS, the subject premises is an irregular “L”-shaped lot, with a lot area of approximately 32,106 sq. ft., with 160'-0" of frontage along West Street (a wide street, a/k/a the West Side Highway, 124'-0" along West 12th Street (a narrow street), and 278'-0" along Bethune Street (a narrow street); and

WHEREAS, the property is currently improved upon with a two and three story building fronting on West Street, with an open parking and loading area in the rear, accessible through Bethune Street; and

WHEREAS, the existing building has most recently been occupied by the Superior Printing and Ink Company, which is vacating the property; and

WHEREAS, upon filing, the site was located in an M1-5 zoning district; thus, the requested relief was a variance to allow

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residential use, as well as a waiver of the accessory off-street parking requirements; and

WHEREAS, as filed, the original proposal was for a building with the following parameters: a total FAR of 6.5; a total building height of 224'-7", base heights of 84'-5" along West Street and 37'-4" to 40'-4" along the side streets; and 103 units; and

WHEREAS, the proposal included a 20-story curvilinear residential tower component, which was located setback from West Street and Bethune Street at varying depths ranging from 10 to 27 ft.; and

WHEREAS, however, on October 11, 2005, the City Council adopted the Far West Village Zoning Map amendment, which changed the zoning of the site to partially C1-7A (the western 100 ft. along West Street) and partially C1-6A (the remainder of the lot); and

WHEREAS, the applicant subsequently modified its application, eliminating the use waiver request; and

WHEREAS, the building proposed in the first modified application had the following parameters: 15 stories; a total FAR of 5.24; a total building height of 188'-11", base heights of 82'-11" along West Street and 38'-11" along the side streets; and 60 units; and

WHEREAS, in this first modified version, the residential tower was located almost in the same location as in the original version, setback approximately 15 ft. from West Street; and

WHEREAS, however, in response to a suggestion of the Board that the total FAR be reduced and in response to concerns of community members as to the placement of the residential tower, the applicant modified the proposal a second time; and

WHEREAS, the applicant now proposes to construct a mixed-use mid-rise 15-story plus penthouse building fronting on West Street midway between Bethune and West 12th Streets, with a three-story base at the corners formed by the intersection of West Street with the two side streets, a twelve story residential tower centered along West Street, setting back approximately 35 ft. from West 12th Street and 25 ft. from Bethune Street, and a series of five three-story townhouses fronting on Bethune Street; and

WHEREAS, the building will contain 64 total dwelling units (including the five townhouses), rise to a height of 186'-9" (including bulkheads, 173'-2" without), with a setback on the West Street side at the eighth floor, setbacks on the West 12th and Bethune Streets sides at the fourth floor, with a total FAR of 5.0, a residential FAR of 4.7, and a commercial FAR of 0.3; and with lot coverages of 89% and 98% for the corner lot portions; 61% for the through lot portion and 62% for the interior lot portion; and

WHEREAS, the Board observes that while the degree of the setbacks complies, the location of them at a lower level than required makes them non-complying; and

WHEREAS, 60 accessory parking spaces in an underground parking garage will also be provided; and

WHEREAS, Community Board 2, Manhattan, recommended disapproval of the initial version of the application, as first filed; and

WHEREAS, the following elected officials and organizations also opposed the initial application: Council Member Quinn, Assembly Member Glick, State Senator Duane, Greenwich Village Community Task Force, and Greenwich Village Society for Historic Preservation; and

WHEREAS, various neighbors of the site also appeared, expressing concerns about the envelope of the proposed building and the impact it would have on their light and air; and

WHEREAS, as mentioned above and as discussed in further detail below, the applicant modified the proposal to address these concerns; and

WHEREAS, consequently, at the most recent hearing, many of these same neighbors, and some of these elected officials, testified that the current version of the application was preferable to previous versions; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in constructing a complying building: (1) the site is a corner "L"-shaped lot with a narrow width along West Street and a narrow depth along Bethune Street, which necessitates the construction of more perimeter wall than normal, and also compromises the ability to create a complying development; (2) the site is on soil that is considered unsuitable for load-bearing materials, requiring a deeper and more extensive pile foundation system; (3) the site has a high water table (6'7" below the surface), which will require extensive dewatering and waterproofing measures; and (4) the soil of the site is contaminated, and must be remediated prior to any development; and

WHEREAS, as to the first basis of uniqueness, the applicant notes that the subject block is narrow (160' in depth from street to street versus the standard 200'), and that the eastern part of lot fronting on Bethune Street measures only 80' in depth; and

WHEREAS, the applicant notes that an as of right residential building that complies with the C1-6A and C1-7A bulk regulations would be a nine to ten story building that maintain a street wall along West Street of 85 ft., and 60 ft. along Bethune Street, and rises to a total building height of 120' on West Street and within 100' of West Street on both Bethune and West 12th Streets and 80' on the midblock portion of Bethune Street; and

WHEREAS, the applicant states that the height and setback regulations would result in a "U"-shaped configuration, and result in a "fortress-like" building with a dark interior courtyard, and would also create a canyon like effect along Bethune Street, which as noted above is a narrow street; and

WHEREAS, more importantly, the applicant notes that due to the 160' width along the West Street frontage, as well as the 80' depth along the eastern part of the Bethune Street frontage, provision of a the required 30' rear yard would result in a building along the Bethune portion of the site of only a maximum 50' in depth; as discussed below, this creates inefficient floor plates, particularly on the higher floor which are setback; and

WHEREAS, the applicant represents that this narrow

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depth is too shallow for a double loaded corridor and too deep for an efficient layout for a single loaded corridor; and

WHEREAS, to avoid this hardship, and to avoid creation of a fortress like building that would create adverse conditions along Bethune Street, height and setback waivers, as well as lot coverage and side yard waivers, are required; and

WHEREAS, as to the second basis of uniqueness, the applicant notes that the depth of the bedrock below the surface of the site varies from approximately 90' on the eastern end to 135' on the western end; and

WHEREAS, in support of this contention, the applicant has submitted a Geotechnical Engineering Evaluation, conducted by its engineering consultant, which includes an analysis of borings taken at various positions located throughout the site; and

WHEREAS, this Evaluation shows that until bedrock is reached, the soil is composed of fine sand, silt with clay, and a more granular sand, none of which is optimum load bearing material; and

WHEREAS, because of such condition and the depth of the bedrock, the consultant recommends the use of a foundation system that includes drilled piles; and

WHEREAS, however, at hearing, the Board requested that the applicant further establish that the cited soil conditions were unique to the site; and

WHEREAS, in response, the applicant provided a more detail analysis, which concluded that although other sites suffer from similar soil problems, none suffer to the degree as the site; and

WHEREAS, the Board also observes that other sites that have been recently developed are in residential zoning districts where a FAR of 6.0 is permitted and are also in tower formations; and

WHEREAS, as to the third basis of uniqueness, the applicant states that the Evaluation shows that the site is within the 100 year flood zone, and that groundwater levels vary from six to seven feet at West Street to 11 to 12 feet at the eastern end of the existing parking area; and

WHEREAS, the applicant represents that extra measures must be taken to waterproof the lower levels of the building to resist the hydrostatic pressures; and

WHEREAS, as to the fourth basis of uniqueness, the applicant states that the site's historical use as a printing establishment resulted in the contamination of the site's soil; and

WHEREAS, the applicant represents that this contamination will require remediation prior to any construction, at a cost of approximately 2.6 million dollars; and

WHEREAS, the Board recognizes that the premium costs associated with the need for a more extensive foundation system, dewatering and waterproofing, and environmental remediation necessitate a development that could realize a greater return than a complying one; and

WHEREAS, specifically, by massing the residential floor area in a tower with a non-complying height rather than distributing it in a complying streetwall building, more marketable units are created and therefore greater revenue is

generated, which is needed to overcome the above-mentioned premium costs; and

WHEREAS, the Board also notes that the parking waiver accommodates an accessory parking garage that increases overall revenue from the project, thereby addressing the cited hardship costs; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the current applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing certain as-of-right alternatives that existed under the M1-5 zoning; given the zoning change, such analysis is no longer relevant; and

WHEREAS, after the rezoning became effective, the applicant submitted a feasibility study that analyzed an as-of-right mixed use building; thus study concludes that a building constructed pursuant to the underlying bulk regulations of the C1-6A and C1-7A districts would not realize a reasonable return, due to the identified hardships; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that each frontage of the site was designed to acknowledge the existing bulk of surrounding buildings; and

WHEREAS, the applicant states that the 15-story mid-rise component of the development is designed with a height and series of setbacks that relate to the surrounding buildings, including the those at 380 West 12th Street and the Westbeth development across Bethune Street; and

WHEREAS, the applicant states that the mid-rise portion of the building maintains the streetwall along West Street and rises to a height of seven stories and 83'-7", where it then sets back rises to 14 stories and 159'-7", which is consistent with the streetwall of the Westbeth building; and

WHEREAS, the applicant notes that the 15th story, with its mechanical penthouse, is consistent with the overall height of Westbeth; and

WHEREAS, the applicant also states that the height is consistent with newer residential developments located south of the site on West Street at Perry and Charles Streets; specifically, there are two sixteen-story buildings located on Perry Street, and a newly constructed building on Charles Street of comparable height; and

WHEREAS, the applicant notes that the eastern part of the Bethune Street portion of the site will be developed with five three-story town homes that will have 30' rear yards, and will preserve light and air to adjacent residential buildings; and

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WHEREAS, these town homes will also rise to height of approximately 40'-0", which will create a minimal impact on Bethune Street (a 50'-0" wide street), especially when compared to the height that is allowed as-of-right; and

WHEREAS, finally, the applicant states that the mid-rise portion of the building presents a front façade in all four directions, so that no adjacent neighboring building will face a rear façade; and

WHEREAS, the Board observes that the height of the streetwall along Bethune and West 12th Streets and the placement of the tower component of the development was very contentious; and

WHEREAS, as noted above, in the original version of the application, the applicant proposed a curvilinear residential tower component, which was located setback from West Street and Bethune Street at varying depths ranging from 10 to 27 ft., with a streetwall along Bethune of approximately 45 to 50 ft.; and

WHEREAS, in the current version, the streetwall along both Bethune and West 12th Streets is at approximately 40 ft., and the tower is centered along West Street, setting back approximately 35 ft. from West 12th Street and 25 ft. from Bethune Street; and

WHEREAS, while this configuration results in a streetwall waiver along West 12th and Bethune Streets within 100 ft. of West Street (where a 60 ft. minimum streetwall height is required), the lower streetwall compensates for the increased height of the tower in providing light and air to the surrounding residential developments, and also is more consonant with the existing scale and character of the neighborhood; and

WHEREAS, the Board notes that the tower location was the subject of much discussion and negotiation between the applicant and the adjacent neighbors, and that all parties agree that the current proposal represents the best compromise; and

WHEREAS, as to the proposed parking garage, the applicant states that the site is far away from public transportation, and that significant car ownership amongst prospective occupants is therefore expected; and

WHEREAS, the applicant states that demand for parking will likely exceed the 15 spaces allowed under ZR 13-12; and

WHEREAS, thus, in order to minimize any potential impact the proposed development may have on the on-street parking demand, the applicant proposes an increase in the amount of parking spaces; and

WHEREAS, the applicant also represents that the 60 parking spaces would be available through a City Planning Commission special permit, and that the findings for said permit, which relate to interior layout and ensuring that there is no increase in traffic congestion, will be complied with once the garage is constructed; and

WHEREAS, the Board agrees that the provision of 60 accessory parking spaces will mitigate any potential impact that the development might have on on-street parking in the area; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the

surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, after the rezoning, the applicant initially proposed a 188'-11" high building with an FAR of 5.25; and

WHEREAS, at the request of the Board, the applicant reduced the height and FAR of the proposal to the current version; and

WHEREAS, therefore, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA103M dated October 11, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the NYC Department of Environmental Protection's Office of Environmental Planning has reviewed the following submissions from the applicant: (1) a March, 2005 Environmental Assessment Statement (EAS), (2) a November, 2003 Phase I Environmental Site Assessment report, and (3) a December, 2004 Phase II Environmental Site Assessment report; and

HEREAS, these submissions specifically examined the proposed action for potential hazardous materials, air quality and noise impacts; and

WHEREAS, a Restrictive Declaration was executed on December 21, 2005 and submitted for recordation to the Office of the City Register on December 28, 2005 for the subject property to address hazardous materials concerns; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City

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Environmental Quality Review and makes each and every one of the required findings under Z.R. § 72-21 and grants a variance to permit, on a lot partially within a C1-7A zoning district and partially within an C1-6A zoning district, the proposed construction of a fifteen and three story mixed-use residential/commercial building, with ground floor retail and an underground accessory parking garage, which does not comply with applicable requirements for floor area ratio, lot coverage, side yards, height and setback, and off-street parking, contrary to Z.R. §§ 23-145, 33-122, 35-31, 23-46, 33-35, 23-633, 33-431, 35-24 and 13-12; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 27, 2005"- sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: 64 total dwelling units (including the five townhouses), a height of 186'-9" (including bulkhead, 173'-2" without); a 10' setback on the West Street side at the Eighth floor; a 15' setback on the West 12th and Bethune Streets sides at the Fourth floor; a total FAR of 5.0; a residential FAR of 4.7; a commercial FAR of 0.3; and lot coverages of 89% and 98% for the corner lot portions; 61% for the through lot portion and 62% for the interior lot portion;

THAT the location of the residential tower shall be as indicated on the BSA-approved plans;

THAT the 60 parking spaces shall be accessory to the on-site uses only;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

75-05-BZ

CEQR #05-BSA-111R

APPLICANT – Snyder & Snyder, LLP, for Immanuel Lutheran Church, owner; Omnipoint Communications, Inc., lessee.

SUBJECT – Application March 29, 2005 – under Z.R. §73-30 and §22-21 – to permit the proposed construction of a non-accessory radio tower for public utility wireless communications (disguised as a 90-foot tall flagpole), located

in an R3-2 zoning district.

PREMISES AFFECTED – 2018 Richmond Avenue, approximately 650' south Amsterdam Place and Richmond Avenue, Block 2100, Lot 460, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert Burdigo.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

Adopted by the Board of Standards and Appeals, January 10, 2006.

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96-05-BZ

CEQR #05-BSA-121M

APPLICANT – Petraro & Jones for Graceful Spa, lessee, 205 LLC, owner.

SUBJECT – Application April 21, 2005 – under Z.R. §73-36 to permit a legalization of physical cultural establishment located on the second floor of a five story mixed-use building. The PCE use will contain 1,465 square feet . The site is located in a C6-3-A Zoning District.

PREMISES AFFECTED – 205 West 14th Street, north side of West 14th Street, 50’ west on intersection with 7th Avenue, Block 764, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Patrick W. Jones.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 15, 2005, acting on Department of Buildings Application No. 104027900, reads, in pertinent part:

“Proposed physical culture establishment is [not] permitted as of right in C6-3A zoning district. This is contrary to section 32-10 ZR.”; and

WHEREAS, this is an application under Z.R. §§ 73-36 and 73-03, to permit, within a C6-3 zoning district, the legalization of an existing physical culture establishment (“PCE”) located in a five-story building, contrary to Z.R. § 32-10; and

WHEREAS, a public hearing was held on this application on December 6, 2005, after due notice by publication in *The City Record*, and then to closure and decision on January 10, 2006; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the New York City Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the north side of West 14th Street, 50 feet west of Seventh Avenue, and has a lot area of 2,400 sq. ft.; and

WHEREAS, the subject PCE will occupy 1,465 sq. ft. of floor area on the second floor; and

WHEREAS, the applicant represents that the PCE will provide massage services by licensed massage professionals; and

WHEREAS, the applicant states that an approved

interior fire alarm system will be installed in the entire PCE space on the second floor, with the addition of smoke detectors, manual pull stations, local audible and visual alarms, and be connected to a FDNY-approved Central Station; and

WHEREAS, the PCE will have the following hours of operation: 10 AM to 10 PM daily; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to Z.R. §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement 05-BSA-121M, dated April 21, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03, to permit, within a C6-3 zoning district, the legalization of an existing physical culture establishment located in a five-story building; *on condition* that all work shall substantially conform to drawings as they apply to the

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objections above noted filed with this application marked "Received December 19, 2005"-(4) sheets and *on further condition*:

THAT the term of this grant shall be for ten years from March 29, 2004, expiring on March 29, 2014;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 10:00AM to 10:00PM daily; THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

147-05-BZ

CEQR #05-BSA-138K

APPLICANT – Sheldon Lobel, P.C., for Kollel Bnei Yeshivas, owner.

SUBJECT - Application June 13, 2005 - under Z.R. §72-21 the proposed enlargement, of a two-story building, housing a synagogue and Rabbi's apartment, located in an R3-2 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, side and front yards and front setback, is contrary to Z.R. §23-141, §24-11, §24-34, §24-35, and §24-521.

PREMISES AFFECTED – 2402 Avenue "P", southeast corner of East 24th Street, Block 6787, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and

Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 4, 2005, acting on Department of Buildings Application No. 301931694, reads:

"The proposed legalization of an enlargement of the existing synagogue and Rabbi's accessory apartment in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Sections 23-141 and 24-11 of the Zoning Resolution.
2. Creates non-compliance with respect to the lot coverage and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 24-35 of the Zoning Resolution.
4. Creates non-compliance with respect to the front yard by not meeting the minimum requirements of Section 24-34 of the Zoning Resolution.
5. Creates non-compliance with respect to the front setback by not meeting the minimum requirements of Section 24-521 of the Zoning Resolution.
6. Creates non-compliance with respect to perimeter wall height and maximum height of building and is contrary to Section 24-521 of the Zoning Resolution.
7. Creates non-compliance with respect to parking by not meeting the minimum requirements of Section 25-31 of the Zoning Resolution."; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R3-2 zoning district, the proposed enlargement and partial legalization of a two-story plus cellar synagogue building with a Rabbi's accessory apartment, which requires various bulk waivers related to floor area ratio, lot coverage, side yards, front yards, front setback, perimeter wall height, maximum building height, and required parking, contrary to Z.R. §§ 23-141, 24-11, 24-34, 24-35, 24-521, and 25-31; and

WHEREAS, a public hearing was held on this application on December 13, 2005, after due notice by publication in *The City Record*, and then to closure and decision on January 10, 2006; and

WHEREAS, this application is brought on behalf of the Kollel Bnei Yeshivas, a not-for-profit entity (hereinafter, the "Synagogue"); and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of the intersection of East 24th Street and Avenue P, and has a total

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lot area of 3,700 sq. ft; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, the site is currently improved upon with a 4,073 sq. ft. two-story plus cellar building, which is occupied by the Synagogue (Use Group 4), as well as the Rabbi's accessory apartment; and

WHEREAS, the applicant proposes to enlarge and alter the existing building as follows: cellar level – enlargements at both the front and back portions of the cellar, repositioning of bathrooms, storage rooms, warming kitchen, boiler room, and the addition of open space to the Synagogue above, as well as the addition of an elevator, which will run from the cellar to the second floor; first floor – expansion of approximately 231 sq. ft., for larger worship space, additional bathrooms and a foyer; second floor – expansion of 655 sq. ft., for additional living area in the Rabbi's dwelling; attic level – addition of an attic with 1,146 sq. ft., for additional bedrooms and bathrooms for the Rabbi's dwelling; and

WHEREAS, the proposal includes the legalization of an additional 83 ½ sq. ft. of floor area on the first floor, consisting of a bathroom that was added to the rear of the building; and

WHEREAS, the applicant states that the following are the programmatic needs of the Synagogue, which are driven by an increase in congregation size: (1) more worship and accessory space than is currently provided, to reduce overcrowded conditions; (2) the provision of additional living space for the Rabbi; (3) space for a study where the Rabbi can minister to congregants in privacy; (4) an expanded rabbinical library; (5) an elevator for handicapped accessibility; and (6) a larger living room, for Rabbi-led classes; and

WHEREAS, construction of the new synagogue building as currently proposed will result in the following non-compliances: a floor area ratio ("FAR") of 1.73 (FAR of 1.0 is the maximum permitted); a lot coverage of 79% (60% is the maximum permitted); side yards of 1'-6" and 6" (side yards of 9'-1" and 8'-0" are required); no front yards (front yards of 15'-0" are required); a front setback of 4'-9" (a front setback of 15'-0" is required); a perimeter wall height of 27'-6" (a perimeter wall height of 21'-0" is the maximum permitted); a total height of 39'-4" (a total height of 35'-0" is the maximum permitted); and no parking spaces (23 spaces are required); and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the existing building, which was constructed as a single-family residence, has insufficient space to accommodate the current size and programmatic needs of the Synagogue; and

WHEREAS, the applicant further states that the requested variances are necessary in order to have enough floor area and height to accommodate the afore-mentioned programmatic needs; and

WHEREAS, specifically, the applicant states that that the

expansion on the first floor will create additionally worship space, remedying the current problem of congregants having no place to sit during religious services; and

WHEREAS, the first floor expansion also will allow the installation of a wheel chair lift, which will provide physically challenged congregants greater access to services; and

WHEREAS, the first floor expansion also allows for separate male and female bathrooms to be located near the worship space; and

WHEREAS, as to the second floor expansion, the applicant states that the improvements to the Rabbi's living area will create more spacious and comfortable living quarters, as well result in an expanded living room and study, which will enable the Rabbi to better minister to and teach congregants; and

WHEREAS, the applicant states that the first floor and cellar of the existing building do not have sufficient or acceptable space for such small-group or individual activities; and

WHEREAS, finally, the applicant states that the creation of the attic will allow the Rabbi and the family more private living quarters, as much of the second floor will be devoted to the congregants; and

WHEREAS, to accommodate these new spaces, the applicant argues that the requested waivers are necessary; and

WHEREAS, additionally, the Board observes that the provision of required parking would be impossible because the existing building and the expansion occupy such a large amount of the subject site; and

WHEREAS, in sum, the Board agrees that, based upon the submitted evidence, the proposed enlargement is necessary in order to meet the programmatic needs of the Synagogue, since the existing building does not possess the square footage necessary to accommodate these needs; and

WHEREAS, therefore, the Board finds that the cited unique physical conditions, when considered in conjunction with the programmatic needs of the Synagogue, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, in concluding that the site is burdened and that hardship exists when considering the programmatic needs of the Synagogue, the Board is cognizant of the fact that under New York state case law, religious institutions are presumed to contribute to the public welfare, and the accommodation of such uses is established State policy; and

WHEREAS, the applicant need not address Z.R. § 72-21(b) since it is a not-for-profit organization and the enlargement will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that there are four-story and six-story multiple dwellings diagonally across from the Synagogue; and

WHEREAS, additionally, the applicant notes that the congregants live within walking distance of the Synagogue,

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such that the parking waiver will not have a negative impact on the availability of on-street parking; and

WHEREAS, at hearing, the Board expressed concern about the positioning of the proposed elevator, which is not within the envelope of the building and encroaches into the front yard along East 24th Street; and

WHEREAS, the Board asked the applicant to consider the possibility of repositioning the elevator in a different area so that it would not be visually obtrusive; and

WHEREAS, the applicant replied that the project architect considered this request and determined that the elevator could not be repositioned without compromising much needed space on the first floor of the building; and

WHEREAS, however, the applicant also explained that the façade of the elevator shaft will be integrated into the façade of the Synagogue, so as to maintain a uniform appearance; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the Synagogue relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA138K dated July 18, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes the

required findings under Z.R. § 72-21, to permit, within an R3-2 zoning district, the proposed enlargement and partial legalization of a two-story plus cellar synagogue building with a Rabbi's accessory apartment, which requires various bulk waivers related to floor area ratio, lot coverage, side yards, front yards, front setback, perimeter wall height, maximum building height, and required parking, contrary to Z.R. §§ 23-141, 24-11, 24-34, 24-35, 24-521, and 25-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 30, 2005" –12 sheets; and *on further condition*:

THAT the apartment on the second floor and attic level shall only be occupied by the Rabbi of the congregation and his or her family, and may not be rented out to any other party;

THAT the above condition shall be listed on the certificate of occupancy;

THAT LL 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

THAT the parameters of the proposed building shall be as follows: a community facility FAR of 1.73; a community facility floor area of 6,413 sq. ft.; lot coverage of 79%; side yards of 1'-6" and 6"; no front yards; a front setback of 4'-9"; a perimeter wall height of 27'-6"; a total height of 39'-4"; and no parking spaces;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

156-05-BZ

CEQR #06-BSA-001M

APPLICANT – Charles Rizzo and Associates (CR&A) for Carmine Partners LLC, owner.

SUBJECT – Application July 5, 2005 – under Z.R. §72-21 to allow a proposed six-story residential building with ground floor retail containing four (4) dwelling units in a C2-6 Zoning District; contrary to ZR §23-145, §23-22, §35-24, and §35-31.

PREMISES AFFECTED – 1 Seventh Avenue South, Block 582, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eli Elbaum.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

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Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and
Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough
Commissioner, dated June 21, 2005, acting on Department of
Buildings Application No. 104124190, reads:

- “1. Plans submitted indicate that the required setback is not being met as per section 35-24(c)(1) ZR. A minimum of ten feet must be provided; plans only show a five-foot setback.
2. Plans submitted indicate that the maximum residential floor area for this zoning lot is being exceeded. This is contrary to section 35-31 ZR and 23-145 ZR. Only residential and commercial uses are being proposed on this zoning lot.
3. Zoning analysis submitted indicates that development is being pursu[ed] as per the Quality Housing Program, therefore proposed lot coverage is exceeding the maximum allowed (eighty percent). This is contrary to section 23-145 ZR.
4. Residential use cannot be proposed on this zoning lot because the zoning lot area is less than 1,700 SF (minimum required). This is contrary to section 23-22 ZR.”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within a C2-6 zoning district (an R7 equivalent), the proposed construction of a new five-story plus cellar and penthouse mixed-use building with commercial use on the first floor and in the cellar and residential use on the upper floors, contrary to Z.R. §§ 35-24(c)(1), 35-31, 23-145 and 23-22; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is 1,601 sq. ft. pre-existing triangular-shaped lot, with 80'-0" of frontage on Seventh Avenue South, 58'-5 1/8" of frontage on Carmine Street, and a depth of 43'-2"; and

WHEREAS, the property is currently improved upon with an automotive service center; and

WHEREAS, the proposed building will require the following waivers: 100% lot coverage (80% is the maximum

permitted); four unit residential building on an existing zoning lot with a lot area of less than 1,700 s.f. (only a one or two-family residential building is permitted); a total floor area ratio (FAR) of 5.5 (3.44 FAR is the maximum permitted); and a 5'-0" setback above the maximum base height (a 10'-0" setback is the minimum required); and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship in constructing a complying building: (1) the triangular shape of the lot; (2) its shallow depth; (3) its small size; (4) the presence of underground storage tanks and poor soil conditions; (5) the site's proximity to the subway; and (6) the site's proximity to a truck route feeding into the Holland Tunnel; and

WHEREAS, the applicant represents that the lot is a pre-existing small lot that does not have the requisite amount of lot area for a multiple dwelling, even though the subject zoning district allows multiple dwellings; as discussed below, the applicant states that developing the site with a one or two-family dwelling is not feasible; and

WHEREAS, the applicant represents that the triangular shape and small size of the lot lead to a compromised floor plate; if the applicant were to comply with the lot coverage requirement of 80%, each residential unit would have a small floor plate further constrained by three acute corners; and

WHEREAS, the applicant also conducted a Phase II Environmental Assessment on the site which documented the following: the presence of four 550-gallon underground storage tanks and one existing waste oil underground storage tank; gasoline contamination of the soil and the presence of organic vapors; and concentrations of semi-volatile organic compounds in the ground water that exceed state standards; and

WHEREAS, the Phase II report states that the remediation will cost approximately \$275,000; and

WHEREAS, the applicant represents that because of the proximity to the subway, any construction on the site will require considerable shoring and protective measures; and

WHEREAS, the applicant further represents that the site is subject to overwhelming noise from its proximity to the Holland Tunnel; and

WHEREAS, however, the Board does not find this to be an actual unique hardship, given that many sites are similarly affected; and

WHEREAS, a public hearing was held on this application on November 15, 2005, at

WHEREAS, accordingly, the Board finds that certain of the aforementioned unique physical conditions, specifically, the poor soil conditions, the presence of underground storage tanks on the site, the triangular-shape and small size of the site, and the proximity to the subway, when considered in the aggregate, create unnecessary hardship and practical difficulties in developing the site in compliance with the current applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right alternatives: (1) a 3.44 FAR retail/residential building; and (2) a 4.3 FAR retail/medical office/residential building; and

WHEREAS, the applicant concludes that neither of the complying scenarios would yield the owner a reasonable return;

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and

WHEREAS, at the request of the Board, the applicant analyzed a 5.0 FAR retail/residential building, and concluded that such a scenario would not achieve a reasonable return; and

WHEREAS, as part of the applicant's feasibility study, the applicant included certain premium construction costs related to the soil conditions, the proximity to the subway, and the inefficiency of the perimeter wall ratio to usable floor area; such costs total \$790,000; and

WHEREAS, the Board requested additional reinforcement of the premium construction costs; and

WHEREAS, the applicant submitted a letter from the project manager that states that environmental remediation will cost approximately \$275,000 and removal of the underground storage tanks will cost approximately \$25,000; and

WHEREAS, the project manager also estimates that the foundation system will cost \$165,000; and

WHEREAS, the project manager further states that because of the high ratio of exterior perimeter wall to usable floor area, the exterior wall systems will cost an additional \$325,000; the project manager notes that the ratio in this case is 75% greater than a typical site configuration; and

WHEREAS, the applicant clarified that premium costs related to the architecture of the proposed building were not included as hardship costs in the financial analysis; and

WHEREAS, the Board also questioned the site valuation, because the site valuation was based upon a multiple dwelling rather than what was allowed under the zoning (one or two family dwelling); and

WHEREAS, the applicant submitted a revised feasibility analysis in which it analyzed 13 one and two-family townhouses located near the subject site and sold in the past 18 months, which concludes that the land value initially attributed to the site is an accurate valuation; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant has submitted a map of the surrounding buildings that indicates that there is a six-story building across from the site on Leroy Street, an eight-story building one block north of the site on Bedford Street, and a six-story building on Seventh Avenue South; and

WHEREAS, there are also two six-story buildings one block east of the site; and

WHEREAS, the applicant notes that the height of the building will be comparable to the heights of other buildings in the neighborhood, including those cited above; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood

nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant contends that a FAR waiver is needed to offset the additional hardship costs related to remediation and foundation construction, as well as address inefficiencies in the floor plates related to the lot's shape and size; and

WHEREAS, however, the Board asked the applicant to ensure that the requested FAR waiver (a total FAR of 5.5) was in fact the minimum variance necessary; and

WHEREAS, with an FAR of 5.5, a six-story building with sufficient floor plates for four units results; and

WHEREAS, at the request of the Board, the applicant analyzed a building with a total FAR of 5.0, with one less floor; the applicant concluded that such a scenario would not realize a reasonable return; and

WHEREAS, the Board concludes that the requested FAR and the resulting additional floor are necessary for revenue generation sufficient to overcome the hardship costs; and

WHEREAS, accordingly, the Board further finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA001M dated July 5, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit, within a C2-6 zoning district (an R7 equivalent), the proposed construction of a new five-story plus cellar and penthouse mixed-use building with commercial use on the first floor and in the cellar and residential use on the upper floors,

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contrary to Z.R. §§ 35-24(c)(1), 35-31, 23-145 and 23-22; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 9, 2005"- six (6) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: a maximum residential FAR of 4.88; a maximum total FAR of 5.5; maximum lot coverage of 100%; four units; and a minimum 5'-0" setback above the maximum base height;

THAT all balconies and/or porches shall be as reviewed and approved by the Department of Buildings; the Board is not approving any balconies and/or porches;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

185-05-BZ

CEQR #06-BSA-011Q

APPLICANT – Manatt, Phelps & Phillips, LLP (Carol E. Rosenthal, Esq.) for 62-02 Roosevelt Avenue Corporation, owner.

SUBJECT – Application August 5, 2005 – under Z.R. §72-21 to allow a dance floor (Use Group 12) to be constructed in an existing eating and drinking establishment located in an R6/C1-2 zoning district, which is contrary to Z.R. §32-15.

PREMISES AFFECTED – 62-02 Roosevelt Avenue, South side of Roosevelt Ave. 101ft from the corner formed by the intersection of the LIRR tracks with Roosevelt Avenue and 192'59" from the corner formed by the intersection of Roosevelt Avenue and 63rd Street, Block 1294, Lot 58, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Chanin French.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 15, 2005, acting on DOB Application No. 402105253 reads:

“Proposed eating and drinking establishment with

entertainment and a capacity of more than 200 persons (UG 12) in C1-2 district and contrary to Section 32-00 Z.R.”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, in an R6 zoning district with a C1-2 commercial overlay, conversion of the first floor of an existing two-story building from an eating and drinking establishment (UG 6) to an eating and drinking establishment with entertainment and dancing (UG 12), contrary to Z.R. § 32-00; and

WHEREAS, a public hearing was held on this application on November 1, 2005 after due notice by publication in *The City Record*, with a continued hearing on December 6, 2005, and then to decision on January 10, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board 2, Queens, initially approved this application with no conditions; and

WHEREAS, subsequent to learning about certain community concerns related to the operation of the premises, the Community Board issued a new report in support of this application so long as the owner complies with certain conditions related to the operation of the premises; and

WHEREAS, the applicant has agreed to comply with the Community Board’s recommended conditions, certain of which are reflected below; and

WHEREAS, the subject zoning lot is located on the south side of Roosevelt Avenue between the Long Island Railroad and 63rd Street, and has a lot area of 7,345 sq. ft.; and

WHEREAS, the existing two-story building has 12,170 sq. ft. of floor area, and contains a restaurant use on the first floor and vacant offices on the second floor; and

WHEREAS, the total floor area of the first floor is 5,960 sq. ft. and the total floor area of the second floor is 6,210 sq. ft.; and

WHEREAS, the applicant represents that the building was used as a theatre until 1986, and then remained vacant until 2004; and

WHEREAS, in 2004, the owner opened the restaurant on the ground floor; the applicant represents that it has unsuccessfully attempted to rent the office space on the second floor; and

WHEREAS, the applicant represents that the proposed stage area and dance floor will occupy 446 sq. ft. of the first floor; the remaining floor area will be used for restaurant use and for a waiting area; and

WHEREAS, the applicant represents that the site has approximately 31 ft. of frontage on Roosevelt Avenue, and has no other street frontage; and

WHEREAS, the applicant further represents that the site is irregularly shaped, with the majority of the site located adjacent to the Long Island Railroad, and a small “flagpole” portion of the site extending from the rear to Roosevelt Avenue; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in strict

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conformance with underlying zoning regulations: (1) the lot is irregularly-shaped; (2) it has a minimal amount of street frontage in relation to the size of the lot; and (3) it is close to the Long Island Railroad and a subway line; and

WHEREAS, the applicant represents that because the site only has 31 ft. of street frontage, it is difficult to attract customers to fill the large restaurant, due to limited street visibility; and

WHEREAS, the applicant represents that the street frontage of the lot represents 0.5% of the total area of the ground floor of the building; the other retail buildings in the area have street frontages of between 1.25% and 2.22% of the total area of the ground floor of the building; and

WHEREAS, in addition, the applicant represents that noise emanating from the surrounding train lines discourages customers from coming to the restaurant, and discourages other conforming residential and commercial uses; and

WHEREAS, the applicant further represents that the lot would not be conducive to conforming residential uses because the minimal street frontage relative to the size of the site would not provide adequate access to light and air in the front of the building; and

WHEREAS, the applicant states that any residences would have to vent into the undersized rear yard or onto a new interior court, which would impact the ability to maximize the allowable floor area; and

WHEREAS, the Board finds that, when considered in the aggregate, the factors stated above create unnecessary hardship and practical difficulties in strictly conforming with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the applicant submitted a feasibility study that analyzed the following scenarios: an as-of-right retail/office use; an as-of-right restaurant/office use; and the proposed use; and

WHEREAS, the feasibility analysis concludes that only the proposed use will garner a reasonable rate of return; and

WHEREAS, therefore, the Board has determined that because of the subject lot's unique physical conditions there is no reasonable possibility that development in strict conformity with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood, and that the proposed use is compatible with adjacent and nearby uses; and

WHEREAS, the applicant represents that Roosevelt Avenue near the site consists almost entirely of commercial uses in low-rise buildings, including retail stores, beauty salons, restaurants, a fish market and an off-track betting parlor; and

WHEREAS, the applicant also submitted a land use map that reflects that the site is bordered by two manufacturing buildings, two commercial buildings, and the Long Island Railroad; and

WHEREAS, the applicant states that there are no residences adjacent to the site or other uses incompatible with late-night activities such as dancing; and

WHEREAS, the Board asked the applicant to review the

requirements for a special permit under Z.R. § 73-244, which would allow similar relief as that being sought in this application, if the site was located in a zoning district where the special permit was available; and

WHEREAS, in response, the applicant provided the Board with an analysis of how it meets the findings under the special permit; and

WHEREAS, the applicant states that it is providing the minimum patron waiting area required by the special permit; and

WHEREAS, in addition, the applicant has submitted a traffic study that shows that the hours of greatest activity at the restaurant do not coincide with peak traffic hours, and that there is sufficient on-street parking in the area to accommodate the proposed use, as well as access to subways and the Long Island Railroad; and

WHEREAS, finally, the applicant has conducted a noise analysis that shows that there are no residential uses so near the site that they would be impacted by the proposed use; and

WHEREAS, the Board observes that there are no residential uses adjacent to the site and that the site is bordered by commercial uses and a railway cut; and

WHEREAS, in addition, the Board observes that the applicant has agreed to certain conditions on the operation of the establishment that are designed to ensure that it will have minimal impacts, certain of which are conditions of this grant; and

WHEREAS, therefore, the Board finds that the proposed application will not alter the essential character of the surrounding neighborhood, impair the use or development of adjacent properties nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, based upon the above, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA011Q, dated August 5, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise;

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Construction Impacts and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.4, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under Z.R. § 72-21, to permit, in an R6 zoning district with a C1-2 commercial overlay, conversion of the first floor of an existing two-story building from an eating and drinking establishment (UG 6) to a 5,960 sq. ft. eating and drinking establishment with entertainment and dancing (UG 12), for a term of two years, contrary to Z.R. § 32-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 12, 2005"--one(1) sheet; and *on further condition*:

THAT this grant shall be for a term of two years, expiring on January 10, 2008;

THAT the hours of operation shall be: 8 AM to 2 AM Monday through Wednesday and 8 AM to 4 AM Thursday through Sunday;

THAT the maximum total occupancy of the first floor shall be 269 persons;

THAT there shall be a maximum of 50 persons on the dance floor, as indicated on the BSA-approved plans;

THAT the first floor shall have a maximum floor area of 5,960 sq. ft., including a waiting area of 1,076 sq. ft. (with a rate of 4 sq. ft. per occupant) and a dance floor of 446 sq. ft.;

THAT from 8 PM until closing, Thursday through Sunday, a minimum of one security guard shall provide security services and ensure that patrons do not congregate on the sidewalk near the entrance;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 10, 2006.

164-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for 2241 Westchester Avenue Realty Corp., owner; Gotham City Fitness LLC, lessee.

SUBJECT – Application April 22, 2004 – under Z.R. §73-36 – to permit the proposed physical culture establishment, located on the second floor of an existing two story commercial building, located in C2-6 within an R6 zoning district, is contrary to Z.R. §32-00.

PREMISES AFFECTED – 2241 Westchester Avenue, a/k/a 2101 Glede Avenue, Block 3963, Lot 57, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 7, 2006, at 1:30 P.M., for decision, hearing closed.

269-04-BZ

APPLICANT – Law Office of Howard Goldman, LLC, for 37 Bridge Street Realty, Corp., owner.

SUBJECT – Application August 2, 2004 – under Z.R. §72-21 to permit the conversion of a partially vacant, seven-story industrial building located in a M1-2 and M3-1 zoning district into a 60 unit loft style residential dwelling in the Vinegar Hill/DUMBO section of Brooklyn.

PREMISES AFFECTED – 37 Bridge Street, between Water and Plymouth Streets, Block 32, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #1BK.

APPEARANCES –

For Applicant: Robert M. Scarano and Howard Goldman.

ACTION OF THE BOARD – Laid over to February 14, 2005, at 1:30 P.M., for continued hearing.

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338-04-BZ

APPLICANT – Martyn & Don Weston, for Hi-Tech Equipment Rental Inc., owner.

SUBJECT – Application October 12, 2004 – under Z.R. §72-21 to permit the proposed construction of a one story and cellar extension to an as-of-right six story hotel, and to permit on grade accessory parking and below grade showroom/retail use, in an R5 zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 806/14 Coney Island Avenue, west side, 300.75' north of Ditmas Avenue, Block 5393, Tentative Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Don Weston and Jack Freeman.

For Opposition: Lisa L. Gokhulsingh.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for continued hearing.

361-04-BZ

APPLICANT – Eric Palatnik, P.C. for Parsons Estates, LLC, owners.

SUBJECT – Application November 17, 2004 – under Z.R. §72-21 – to permit a proposed three-story residential building in an R4 district which does not comply with the zoning requirements for floor area, wall height, sky exposure plane, open space, lot coverage and the number of dwelling units; contrary to Z.R. §23-141c, 23-631 and 23-22.

PREMISES AFFECTED – 75-48 Parsons Boulevard, 168.40' north of 75th road, at the intersection of 76th Avenue; Block 6810, Lot 44, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik and Robert Pauls.

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 14, 2006, at 1:30 P.M., for decision, hearing closed.

373-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Brendan McCartan, owner.

SUBJECT – Application November 26, 2004 – under Z.R. §72-21 in an R4 district, permission sought to allow the construction of a two-story one-family dwelling on a 25' x 53.55' lot consisting of 1,338 SF. The structure does not comply with floor area allowed, open space, lot area, front yard.

PREMISES AFFECTED – 57-69 69th Street, north side of 69th Street 24' west of 60th Avenue, Block 2830, Lot 33, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to February 7, 2006, at 1:30 P.M., for continued hearing.

386-04-BZ

APPLICANT – Rothkrug, Rothkrug, Weinberg & Spector, for PSCH, Inc., owner.

SUBJECT – Application November 9, 2004 – under Z.R. §72-21 to permit the proposed enlargement and development of an existing community facility, located in M1-1 zoning district, which does not comply with the zoning requirements for accessory off-street loading berth, waterfront yards, total height and parking, is contrary to Z.R. §44-52, §62-331, §62-34, §62-441 and §44-21.

PREMISES AFFECTED – 22-44 119th Street, corner of 23rd Avenue, Block 4194, Lot 20, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

For Opposition: Gary Hisiger.

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 14, 2006, at 1:30 P.M., for decision, hearing closed.

396-04-BZ

APPLICANT – Stroock & Stroock & Lavan, LLP, by Ross Moskowitz, Esq., for S. Squared, LLC, owner.

SUBJECT – Application December 21, 2004 – under Z.R. §72-21 to permit the Proposed construction of a thirteen story, mixed use building, located in a C6-2A, TMU zoning district, which does not comply with the zoning requirements for floor area, lot coverage, street walls, building height and tree planting, is contrary to Z.R. §111-104, §23-145, §35-24(c)(d) and §28-12.

PREMISES AFFECTED -180 West Broadway, northwest corner, between Leonard and Worth Streets, Block 179, Lots 28 and 32, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 7, 2006, at 1:30 P.M., for continued hearing.

398-04-BZ

APPLICANT – Eric Palatnik, P.C., for Babavof Avi, owner.

SUBJECT – Application December 23, 2004 – under Special Permit Z.R. §73-622 – proposed legalization of an enlargement of a single family residence which causes non-compliance to Z.R. §23-14 for open space and floor area. The premise is located in R2 zoning district.

PREMISES AFFECTED – 2103 Avenue M, northeast corner of East 21st Street, Block 7639, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for continued hearing.

MINUTES

5-05-BZ

APPLICANT - Sheldon Lobel, P.C., for S & J Real Estate, LLC, owner.

SUBJECT – Application January 14, 2005 – under Z.R.§73-53 – to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,499.2 square feet.

PREMISES AFFECTED – 59-25 Fresh Meadow Lane, east side, between Horace Harding Expressway and 59th Avenue, Block 6887, Lot 24, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Irving Minkin.

For Opposition: Iabros Halikiopoulos and Mary Halikiopoulos.

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for continued hearing.

74-05-BZ

APPLICANT – Snyder & Snyder, LLP, for The Island Swim Club, Inc., Omnipoint Communications, Inc., lessee.

SUBJECT – Application March 29, 2005 – under Z.R. §§73-30 and 22-21 – to permit the proposed construction of a non-accessory radio tower for public utility wireless communications (disguised as a 50-foot tall flagpole), located in an R3-2 zoning district.

PREMISES AFFECTED – 1089 Rockland Avenue, northeast side, between Borman and Shirra Avenues, Block 2000, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert Burdigo.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

81-05-BZ

APPLICANT – Bryan Cave LLP (Margery Perlmutter, Esq.) for the Lyon Group, LLC, owner.

SUBJECT – Application April 5, 2005 – under Z.R.§72-21 to construct a 7-story plus mezzanine residential building containing 39 dwelling units and 10 accessory parking spaces in an R6 district, contrary to ZR §§23-145, 23-632, 23-633, 25-23.

PREMISES AFFECTED – 1061/71 52nd Street, north side, 229' east of Fort Hamilton Parkway, Block 5653, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Margery Perlmutter, Simon Fouladian and Jack Friedman.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for continued hearing.

93-05-BZ

APPLICANT – Eric Palatnik, P.C., for Esther Cynamon, owner.

SUBJECT – Application November 4, 2005 – under Special Permit Z.R. §73-36. Enlargement of a single family home to vary section Z.R. §23-141 for floor area and open space. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 2621 Avenue M, corner of Avenue “M” and East 27th Street, Block 7644, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 7, 2006, at 1:30 P.M., for decision, hearing closed.

180-05-BZ

APPLICANT – Wachtel & Masyr for 1511 Third Avenue Association/Related/Equinox, owner.

SUBJECT – Application August 4, 2005 – Special Permit under Z.R. §§73-03 and 73-367 approval sought for the legalization of a physical cultural establishment located on the entire second floor portion of the third floor and the entire fourth floor with a total of 34,125 sq. ft. of floor area. The site is located in a C2-8 zoning district.

PREMISES AFFECTED – 1511 Third Avenue, a/k/a 201 East 85th Street, northeast corner of 85th Street and Third Avenue, Block 1531, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 7, 2006, at 1:30 P.M., for adjourned hearing.

Pasquale Pacifico, Executive Director.

Adjourned: 5:45 P.M.

BULLETIN

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Volume 91, Nos. 4-5

February 3, 2006

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DOCKETS

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8-06-A

42-32 149 Place, West side of 149 Place, 255' N/W of Beech Avenue, Block 5380, Lot 49, Borough of **Queens**, **Community Board: 7**. General City Law Section 35-To develop a two family semi-detached residence in the bed of a mapped street.

9-06-A

42-34 149 Place, West side of 149 Place, 255' N/W of Beech Avenue, Block 5380, Lot 50, Borough of **Queens**, **Community Board: 7**. General City Law Section 35-to develop a two family semi-detached residence in the bed of a mapped street.

10-06-BZ

2251 East 12th Street, Between Avenue V and Gravesend Neck Road, Block 7372, Lot 67, Borough of **Brooklyn**, **Community Board: R4**. (SPECIAL PERMIT)73-622-Enlargement of a single and two family detached and semi-detached residences.

11-06-BZ

1245 East 22nd Street, East 22nd Street between Avenue K and Avenue L, Block 7622, Lot 13, Borough of **Brooklyn**, **Community Board: 14**. (SPECIAL PERMIT)73-622-To allow the enlargement of a single family residence located in a residential (R2) ZD.

12-06-A

37-19 Regatta Place, Bounded by Bay Street and the Little Neck Bay, Block 8071, Lot 32, Borough of **Queens**, **Community Board: 11**. Appeal-From decision of the Queens Borough Commissioner, dated December 23, 2005, refusing to revoke permits and approvals for the subject premises based on applicant's assertion of zoning violations.

13-06-BZY

224 Richmond Terrace, Southeast corner of Richmond Terrace and Nicholas Street, Block 13, Lot 60, Borough of **Staten Island**, **Community Board: 1**. Extension of Time-to complete construction.

14-06-A

54 Graham Place, S/S Graham Place 158.86' W/O Beach 20th Street, Block 16350, Lot 400, Borough of **Queens**, **Community Board: 14**. General City Law Section 36, Article 3-Proposed to reconstruct and enlarge existing single family dwelling not fronting a mapped street.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

MARCH 14, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 14, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1888-61-BZ

APPLICANT – Alfonso Duarte, for Ali Amanolahi, owner.
SUBJECT – Application June 21, 2005 - Pursuant to ZR 11-412 for an Amendment to an eating and drinking establishment and catering hall for the further increase in floor area and the to legalize the existing increase in floor area, the separate entrance to the catering hall and the drive thru at the front entrance. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 93-10 23rd Avenue, southwest corner of 94th Street, Block 1087, Lot 1, Elmhurst, Borough of Queens.

COMMUNITY BOARD #3Q

545-78-BZ

APPLICANT – Petraro & Jones, LLP, for Cotaldo Vasapolli, owner.

SUBJECT – Application January 15, 2004 – Reopening for an extension of the term of a variance for a commercial vehicle storage establishment in an R4 zoning district. The term expired on March 27, 2002. The application also seeks a waiver of the Board's rules of practice and procedure for an extension of term application filed more than one year, but less than two years, following expiration of the term. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 901/903 Pine Street, West side of Pine Street, 250' north of the intersection of Pine Street and Cozine Avenue, Brooklyn

COMMUNITY BOARD #5BK

263-98-BZ

APPLICANT –Rothkrug Rothkrug Weinberg Spector, for Joseph Elegudin, owner.

SUBJECT – Application November 18, 2005 – Extension of time to complete construction pursuant to Special Permit ZR 73-622 for an enlargement of a single family home which expired on September 9, 2005; and for an amendment to the previously approved plans to add an elevator to the residence. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED –118 Oxford Street, 115' south of intersection with Shore Boulevard, Block 8757, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

317-05-A

APPLICANT – Kevin Shea, applicant. Woodcutters Realty Corp. Owner; Three on Third LLC, lessee.

SUBJECT – Application November 1, 2005 – Appeal challenging DOB's interpretation of various provisions of the Zoning Resolution relating to the construction of a 16 story mixed use building in an C6-1/R7-2 Zoning district, which violates Zoning Floor Area exclusions, height and setback, open space and use regulations.

PREMISES AFFECTED – 4 East 3rd Street, South east corner of East Third and the Bowery, Block 458, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

MARCH 14, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 14, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

359-04-BZ

APPLICANT – Eric Palatnik, P.C., for Alfred Savegh, owner.

SUBJECT – Application November 12, 2004 – Under Z.R. §73-622 to permit the legalization of an enlargement to an existing single family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio and rear yard, is contrary to Z.R. §23-141 and §23-47.

PREMISES AFFECTED –1425 East 24th Street, between Avenues "N" and "O", Block 7678, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

65-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum, Inc., owner.

SUBJECT – Application March 16, 2005 – Special Permit filed pursuant to sections 11-411 and 11-413 of the zoning resolution to request the reinstatement of an expired, pre-1961, variance, and to request authorization to legalize the change of use from a gasoline service station with accessory automotive repairs, to an automotive repair facility without the sale of gasoline, located in a C1-4/R8 zoning district.

PREMISES AFFECTED – 269-275 East Burnside Avenue, northside of East Burnside Avenue between Ryer Avenue and Anthony Avenue, Block 3156, Lot 85, Borough of Bronx.

COMMUNITY BOARD #5BX

146-05-BZ

APPLICANT – Howard Weiss, Esq., Davidoff, Malito & Hutcher,LLP, for Spafumiere Inc., lessee, Manhattan Embassy Co., owner.

SUBJECT – Application June 10, 2005 – approval sought for a proposed physical cultural establishment located on a portion of the first floor of a mixed-use building. The PCE use will contain 2,300 square feet. The site is located in a C1-9 TA Zoning District.

PREMISES AFFECTED – 900 Second Avenue, a/k/a 884-900 Second Avenue, 301-303 East 47th Street, 300-306 East 49th Street, Block 1340, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

179-05-BZ

APPLICANT – Harold Weinberg, P.E., for Steven Goldfarb, owner.

SUBJECT – Application August 3, 2005 – Special Permit pursuant to ZR 73-622 for a two story rear enlargement to a single family semi-detached home to vary ZR §23-14 for floor area and open space, ZR §23-47 for less than the required rear yard, ZR §23-641 for less than the required side yard and ZR §23-631 for total height. The premise is in an R3-1 zoning district.

PREMISES AFFECTED – 139 Langham Street, east side 311’-8 7/8” south of Shore Boulevard, Block 8755, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #15BK

SUBJECT – Application August 16, 2005 – Under Z.R. §72-21- Extending the term of variance which expired on November 6, 1997 to permit in an R3-X the continued use of a one story building for retail sales with accessory parking. (Jurisdictional § 72-21).

PREMISES AFFECTED –5525 Amboy Road, North side 442.44’ West of Huguenot Avenue, Block 6815, Lot 85, Borough of Staten Island,

COMMUNITY BOARD #3SI

Pasquale Pacifico, Executive Director

194-05-BZ

APPLICANT – David L. Businelli, for Steven Morris, owner.

MINUTES

REGULAR MEETING TUESDAY MORNING, JANUARY 24, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meeting of the Board held on Tuesday morning and afternoon, November 1, 2005 and Wednesday morning November 2, 2005, as printed in the bulletin of November 10, 2005, Vol. 90, Nos. 45-46. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

77-99-BZ

APPLICANT – The Agusta Group, for Turnpike Auto Laundry, Inc., owner.

SUBJECT – Application March 8, 2005 – Extension of Term of the Special Permit for the operation of an existing auto laundry which expired on February 8, 2005 and an extension of time to obtain a Certificate of Occupancy which expired on July 22, 2005. The premise is located in C8-1 and R-2 zoning district.

PREMISES AFFECTED – 255-39 Jamaica Avenue, a/k/a Jericho Turnpike, north side of Jamaica Avenue, 80' west of 256th Street, Block 8830, Lot 52, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an extension of term of a previously granted variance pursuant to Z.R. § 11-411, as well as an application for an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on November 22, 2005, after due notice by publication in *The City Record*, and then to decision on January 24, 2006; and

WHEREAS, Community Board No. 13, Queens, and the Queens Borough President recommended conditional approval of this application, as discussed below; and

WHEREAS, the site is a 17,550 sq. ft. lot improved upon with a 5,691 sq. ft. one and two story concrete building occupied as an auto laundry (Use Group 16) and is partially within an R2 zoning district and partially within a C8-1 district; and

WHEREAS, the site is located at the northwest corner of the Jericho Turnpike and 256th Street; and

WHEREAS, on February 8, 2000, the Board granted an application pursuant to ZR § 11-412 to permit the proposed

legalization of an enlargement to the existing auto laundry for a term of five years, to expire on February 8, 2005, on condition that a new certificate of occupancy be obtained within two years of the date of the grant; and

WHEREAS, the site was previously the subject of three prior Board actions: BSA Cal. No. 130-29-A, which allowed the construction of a one-story auto repair facility; Cal. No. 128-70-BZ, which permitted the change in occupancy of the building from auto repair to auto laundry, as well as an enlargement in lot area for accessory reservoir space; and Cal. No. 16-90-BZ, which allowed a legalization of an enlargement of the existing building; and

WHEREAS, the applicant now seeks an extension of term for ten additional years, as well as an extension of time in which to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that no certificate of occupancy was obtained after the 2000 grant due to delays in obtaining appropriate sign-offs from the Department of Buildings; and

WHEREAS, the Queens Borough President and the Community Board recommended that traffic coordinators be present at the site to ensure that any traffic impacts are minimized; and

WHEREAS, the applicant declines to provide such coordinators, and the Board agrees that they are not needed provided that operations on the site are conducted in compliance with the conditions of this grant, as well as all relevant conditions of past grants; and

WHEREAS, accordingly, the Board finds it appropriate to grant the requested extension of time and extension of term.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on February 8, 2000, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, for an additional period of one (1) year from the date of this resolution, to expire on January 24, 2007, and, pursuant to ZR § 11-411, to permit an extension of the term of the variance for an additional period of ten years from the last expiration; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received October 5, 2005’-(4) sheets and ‘December 13, 2005’-(1) sheet; and *on further condition*:

THAT this grant is for a term of ten years from the last expiration date, to expire on February 8, 2015;

THAT the hours of operation shall be 8 AM to 6 PM Monday through Saturday and 8 AM to 4 PM Sunday;

THAT there shall be no vehicles standing or parked in the sidewalks or streets adjacent to the site at any time;

THAT the gates on the 256th Street side of the site shall be closed and locked from 6:30 PM to 8 AM daily;

THAT all vehicles exiting from the accessory parking lot shall exit the site onto the Jericho Turnpike and appropriate signage indicating this shall be installed by the auto laundry operator;

THAT the above conditions shall be listed on the certificate of occupancy;

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THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT a new certificate of occupancy shall be obtained within one year of the date of this grant;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 401129015)

Adopted by the Board of Standards and Appeals, January 24, 2006.

337-03-BZ, Vol. II

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 340 Madison Owner, LLC, owner.

SUBJECT – Application September 1, 2005 – Reopening for an amendment to a previously approved variance which permitted the enlargement of the 21-story office, retail and church building. The applicant is requesting a proposed modifications of plans. The site is located in a C5-3 zoning district.

PREMISES AFFECTED – 340 Madison Avenue a/k/a 16 East 44th Street, west blockfront of Madison Avenue, between East 43rd and 44th Streets, Block 1278, Lots 8, 14, 15, 17, 62, 63, 65, Borough of Manhattan.

COMMUNITY BOARD #5

APPEARANCES –

For Applicant: Robert Flahive, Kramer Levin.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an application to amend a variance granted on March 23, 2004, under ZR § 72-21, for the proposed enlargement of an existing 21-story office, retail and church building (the “building”), which required variances to modify the Special Street Wall requirements of the Grand Central Subdistrict regulations and to permit the transfer of floor area across a zoning district boundary, contrary to ZR §§ 81-621, 81-211, 77-02, and 33-17; and

WHEREAS, the instant application requests: (1) revisions to the ground floor plan to provide a smaller than required building entrance on East 43rd Street, in order to avoid disrupting an existing tenant; and (2) revisions to the plans for floors 17 through 21 to provide more uniform setbacks along East 44th Street on these floors; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in *The City Record*, and then to decision on January 24, 2006; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application

WHEREAS, the subject zoning lot is 48,265 sq. ft., situated on the west blockfront of Madison Avenue, between East 43rd and 44th Streets, and is located partially within a C5-3 zoning district (within the Midtown Special District/Grand Central Subdistrict) and partially within a C5-2.5 zoning district (within the Midtown Special District); and

WHEREAS, the subject lot is currently occupied by the building, which has 503,487 sq. ft. of floor area; and

WHEREAS, the previously granted variance provided for the transfer of floor area across a zoning district boundary, in order to allow the enlargement of the building; and

WHEREAS, the previously granted variance also provided for an increase in degree of non-compliance of the streetwall height on the three frontages of the building; specifically, the height of the West 43rd Street streetwall was approved at 187.94 feet for a distance of 95 feet from the Madison Avenue intersection, the height of the streetwall along the southern 100.41 feet Madison Avenue was approved at 187.94 feet, and the height of the East 44th Street streetwall was approved at 187.94 feet; and

WHEREAS, the applicant now proposes the aforementioned minor amendments; and

WHEREAS, as to the need to amend the ground floor plan, the applicant states that the proposal approved by the Board in 2004 complied with the building lobby entrance requirements of ZR §81-623 (a special requirement of the Grand Central Subdistrict) in that the proper dimensional requirements were met for both the East 43rd Street and Madison Avenue entrances; and

WHEREAS, the applicant represents that the East 43rd entrance now proposed would not comply with the minimum width of 15 ft. or minimum height of 15 ft. due to unanticipated structural constraints and the concerns of the existing tenant; and

WHEREAS, the applicant states that in order to comply with the required dimensions, approximately 18 ft. of the building's frontage would need to be reconfigured in order to provide sufficient circulation around an existing structural column; and

WHEREAS, the applicant represents that the existing tenant’s mechanical systems are at the exact location where the entry would need to be widened; any relocation of these systems would be disruptive to this tenant’s business operations; and

WHEREAS, in addition, the applicant notes that the minimum height requirement can not be met without demolition of existing stone fascia, relocation of a spandrel beam, offsetting of a floor slab, and installation of a raised slab; and

WHEREAS, the applicant states that in lieu of full compliance, the proposed width of the entrance will be approximately 11.06 ft., and the proposed height will be 12.35 ft., as indicated on submitted plans; and

WHEREAS, the applicant also notes that the minimum entrance depth requirements for the East 43rd entrance would be met, and that the combined area of the East 43rd and Madison entrances would exceed the pedestrian circulation space

MINUTES

requirement for the proposed enlargement of the building; and

WHEREAS, at hearing, the Board noted that ZR § 81-623 was not before the Board when it made its 2004 grant, and asked the applicant to obtain from DOB a revised objection citing this section; said objection, dated December 7, 2005, was obtained by the applicant and submitted to the Board; and

WHEREAS, the Board finds that the requested deviations from strict compliance with this ZR section are required due to structural difficulties that would result from compliance, and also finds that the deviations are minor in nature and will not present any detriment to the Board's prior determination that the variance proposed under the 2004 grant would not negatively impact the character of the community; and

WHEREAS, therefore, the Board agrees that this modification is appropriate to grant; and

WHEREAS, as to the need to amend the plans for floors 17 through 21, the applicant states that the proposed modification is the infill of the outer court along the East 44th Street elevation at the 17th and 18th floors, and the reduction of the size of the floor plates on the 19th through 21st floors by shaving off certain irregular portions of the floors near the eastern and western corners along the East 44th Street elevation; and

WHEREAS, this would result in the encroachment within the required 10 ft. setback by a depth of 2 ft. for 43 ft. along the East 44th Street elevation; and

WHEREAS, the total encroachment would involve a combined area of 172 sq. ft., which the applicant represents is an increase of approximately 2 percent above the combined area of encroachment previously approved; and

WHEREAS, the applicant states that this modification would allow for a more uniform building profile at the upper floors of the building on the East 44th Street elevation; and

WHEREAS, the applicant also notes that this modification would result in a building that contains approximately 3,260 sq. ft. less floor area than approved by the Board in the 2004 grant; the Board approved 579,871 sq. ft. of floor area; the building as currently proposed would contain 576,611 sq. ft.; and

WHEREAS, the Board has reviewed this proposed modification and agrees that it is minor and appropriate to grant.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on March 23, 2004, so that as amended this portion of the resolution shall read: "to permit (1) revisions to the ground floor plan to provide a narrower building entrance on East 43rd Street and (2) revisions to the plans for floors 17 through 21 to provide more uniform setbacks along East 44th Street on these floors, all as illustrated on the BSA-approved plans; *on condition* that all work shall substantially conform to drawings as filed with this application, marked 'Received September 1, 2005' -(11) sheets, 'September 19, 2005'-(1) sheet and 'December 7, 2005'-

(2) sheets; and *on further condition*:

THAT all conditions from prior resolution(s) remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

(DOB Application No. 103434240)

Adopted by the Board of Standards and Appeals, January 24, 2006.

364-36-BZ, Vol. II

APPLICANT – Joseph P. Morsellino, for Dominick Tricarico & Est. of P. Tricarico, owner.

SUBJECT – Application July 13, 2005 – Extension of Term/Waiver of a Variance which expired on February 11, 2005 for an additional 15 year term of an automotive service station. The premise is located in a C1-4 & R6B zoning district.

PREMISES AFFECTED – 31-70 31st Street, 31st Street and Broadway, Block 589, Lot 67, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for continued hearing.

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469-64-BZ

APPLICANT – Charles Washington, for Heinz Vieluf, owner.

SUBJECT – Application August 19, 2005 - Amendment to a Variance Z.R. §72-21 to propose a second floor office addition in conjunction with existing first floor of food processing plant operation. The premise is located in a C2-4 in an R6 zoning district. The second floor enlargement is fully within the C2-4 portion of the lot.

PREMISES AFFECTED – 630-634 St. Ann’s Avenue, north east corner of Westchester Avenue at St. Ann’s Avenue, Block 2617, Lot 1, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Charles Washington.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February 14, 2006, at 10 A.M., for decision, hearing closed.

855-87-BZ

APPLICANT – Glen V. Cutrona, AIA, for Michael Beck, owner; Mueller Distributing, lessee.

SUBJECT – Extension of Term of a Variance for an existing (UG16) warehouse with (UG6) office space on the mezzanine level. The term of variance expired on November 23, 2003. The premise is located in an R3A zoning district.

PREMISES AFFECTED – 15 Irving Place, Block 639, Lot 10, Borough of Staten Island.

COMMUNITY BOARD #1

APPEARANCES –

For Applicant: Glen V. Cutrona.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February 14, 2006, at 10 A.M., for decision, hearing closed.

203-92-BZ

APPLICANT – Sullivan, Chester & Gardner, P.C., for Austin-Forest Assoc., owner; Lucille Roberts Org., d/b/a Lucille Roberts Figure Salon, lessee.

SUBJECT – January 26, 2005 Extension of Term/Amendment/Waiver for a physical culture establishment. The premise is located in an R8-2 zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side, 333’ west of 71st Avenue, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester.

ACTION OF THE BOARD - Laid over to May 9,

2006, at 10 A.M., for continued hearing.

4-95-BZ

APPLICANT – Harry Meltzer, R.A., for 21 Hillside LLC/Allan Goldman, owner.

SUBJECT – Application June 27, 2005 - Pursuant to ZR §11-411 for the extension of term of a Use Group 8public parking lot for 48 cars. The premise is located in an R7-2 zoning district.

PREMISES AFFECTED – 21/23 Hillside Avenue, south side of Hillside Avenue, 252’-2” east of Broadway, Block 2170, Lot 110, Borough of Manhattan.

COMMUNITY BOARD #12

APPEARANCES –

For Applicant: Jonathan Greene.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February 14, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

376-04-A/377-04-A

APPLICANT – Robert A. Caneco, R.A., for Al Sala, owner.
SUBJECT – Application filed November 29, 2004 – to construct two one family homes with built in two car garage not fronting a legally mapped street is contrary Section 36, Article 3 of the General City Law.

PREMISES AFFECTED – 238 and 240 Billiou Street, s/s Billiou Street, 280.00’ west of Billiou Street and Arbutus Avenue, Block 6559, Lots 130 and 133.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated November 4, 2004, acting on Department of Buildings Application Nos. 500497802 & 500497811, reads:

“The Street giving access to the proposed building is not duly placed on the official map of the City of New York. Therefore, no Certificate of Occupancy may be issued as per Article 3, Section 36 of the General City Law.

Proposed construction does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary

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to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on January 10, 2006 after due notice by publication in the *City Record*, and then to decision on January 24, 2006; and

WHEREAS, by letter dated December 27, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated November 4, 2004 acting on Department of Buildings Application Nos. 500497802 & 500497811 is hereby modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received December 20, 2005”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 24, 2006.

319-05-A

APPLICANT – Gary Lenhart for Breezy Point Cooperative, owner Judith & Michael Scotko, lessee.

SUBJECT – Application November 2, 2005 – proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system located in the bed of a service lane is contrary to the Buildings Department Policy.

PREMISES AFFECTED – 5 Kildare Walk, E/S Kildare Walk 64.67 S/O Oceanside Avenue, Block 16350 part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 25, 2005, acting on Department of Buildings Application No. 402147823, reads:

“A1- The Street giving access to the existing building to be altered is not duly placed on the official map of the City of New York. Therefore :

- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
- b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space [which] is contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgraded private disposal system is in the bed of a service lane contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on January 10, 2006 after due notice by publication in the *City Record*, hearing closed and then to decision on January 10, 2006; and

WHEREAS, by letter dated November 14, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, October 25, 2005, acting on Department of Buildings Application No. 402147823, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received November 2, 2005”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 24, 2006.

231-04-A

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APPLICANT – Joseph P. Morsellino, Esq., for Chri Babatsikos and Andrew Babatsikos, owners.

SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243rd Street, Block 8103, Lot 5, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Eric Palatnik.

VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February 14, 2006, at 10 A.M., for continued hearing.

200-05-A and 201-05-A

APPLICANT – Joseph P. Morsellino, for Randolph Mastronardi, et. al., owners.

SUBJECT – Application August 23, 2005 – to permit the building of two conforming dwellings in the bed of mapped 157th Street as per GCL Section 35.

PREMISES AFFECTED – 20-17 and 20-21 Clintonville Street, Clintonville Street between 20th Avenue and 20th Road, Block 4750, Lots 3 and Tent. 6. Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 28, 2006, at 10 A.M., for continued hearing.

145-05-BZY

APPLICANT – Krzysztof Rostek, for Belvedere III, LLC, owner.

SUBJECT – Application June 9, 2005 – Proposed extension of time to complete construction to Z.R. §11-331 for a six family house.

PREMISES AFFECTED – 135 North 9th Street, north side, 125' from northeast corner of Berry Street, Block 2304, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD

APPEARANCES –

For Applicant: Krzysztof Rostek and Wiltov Wasilewski.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February 14, 2006, at 10 A.M., for decision, hearing closed.

155-05-A

APPLICANT – Richard Kusack, neighbor; 81 East Third Street Realty, LLC., owner.

SUBJECT – Application filed on June 30, 2005 – for an

appeal of the Department of Buildings decision dated May 27, 2005 rescinding its Notice of Intent to revoke the approvals and permit for Application No. 102579354 for a community facility (New York Law School) in that it allows violations of the Zoning Resolution and Building Code regarding bulk, light, air, and unpermitted obstructions in rear yards.

PREMISES AFFECTED – 81 East 3rd Street, Manhattan, Block 445, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jack Lester, Richard Kusack, Stuart Z., David McWater, Roland LeGiarni-Laura, Lisa Kaplan for Rose Mandez, Michael Rosen, Steve Herrick and Janet Danson.

For Administration: Felicia Miller, Department of Buildings.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for continued hearing.

Pasquale Pacifico, Executive Director.

Adjourned: 11:30 A.M.

REGULAR MEETING TUESDAY AFTERNOON, JANUARY 24, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

38-05-BZ

APPLICANT – Eric Palatnik, P.C., for John Genovese, contract vendee.

SUBJECT – Application April 8, 2005 – under Z.R. §72-21 to reduce the number of required accessory parking spaces pursuant to Z.R. §36-21 (38 required, 26 proposed) and to eliminate the required loading berth pursuant to Z.R. §36-62 for a new Use Group 6 drug store (Walgreen's) located within an R4/C1-2 district.

PREMISES AFFECTED – 80-01 Eliot Avenue, bound by 80th Street, Eliot Avenue, Caldwell Avenue and 81st Street, Block 2921, Lot 40, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

Adopted by the Board of Standards and Appeals, January 24, 2006.

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127-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Church Avenue Realty, Inc., owner; Popeyes Chicken and Biscuits, lessee.

SUBJECT – Application May 24, 2005 – under Z.R. §73-243 to permit approval for a special permit to legalize an existing accessory drive through window for an eating and drinking establishment. The site is located in a C1-3/R5 zoning district.

PREMISES AFFECTED – 9216 Church Avenue, a/k/a 9220 Church Avenue, southwest corner of the intersection between Church Avenue, East 93rd Street, and Linden Boulevard, Block 4713, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Richard Lobel.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 26, 2005, acting on Department of Buildings Application No. 301933022, reads:

“The accessory drive through facility as proposed for the eating and drinking establishment which is located in a R5/C1-3 zoning district requires a special permit from the BSA as per section 32-31 and 73-243 of the Zoning Resolution”; and

WHEREAS, this application is for the issuance of a special permit for the legalization of an existing eating and drinking establishment (Use Group 6) with an accessory drive-thru facility in a C1-3(R5) zoning district, which requires a special permit pursuant to Z.R. §§ 73-243 and 73-03; and

WHEREAS, a public hearing was held on this application on November 1, 2005 , with a continued hearing on December 6, 2005 and on January 24, 2006, closed and decided ; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board 17, Brooklyn, recommends approval of this application, with the stipulation that it be subject to a “two year review” by the Community Board; and

WHEREAS, the subject site is a 12,000 sq. ft. lot located on the southwest corner of the three-way intersection of Church Avenue, East 93rd Street, and Linden Boulevard, on a lot with 140 feet of frontage on East 93rd Street and 80 feet of frontage on Church Avenue; and

WHEREAS, the subject lot is improved upon with an existing building, occupied by a Use Group 6 fast food restaurant, which contains 1,975 sq. ft. of floor area; and

WHEREAS, the Board previously considered an application to legalize the drive-through facility at this location under BSA Cal. No. 706-85-BZ; the application was denied and the existing restaurant at that time vacated the premises, but the drive-through window remained; and

WHEREAS, the applicant states that the current restaurant then leased and renovated the building, but was unaware that the drive-thru facility was not legal; and

WHEREAS, the applicant represents that the site and drive-thru facility provides reservoir space for a ten-car queue, as required; and

WHEREAS, after reviewing the site plan submitted at the time of initial application, which indicates circulation, parking and reservoir spaces, the Board questioned whether the site plan could be improved; and

WHEREAS, specifically, the Board expressed concern that the parking layout for the site did not appear feasible and that the reservoir spaces were located such that they could conflict with the usage of certain of the parking spaces; and

WHEREAS, the initial site plan indicated required parking spaces adjacent to the western edge of the site, and the travel lane for the drive-through facility directly to the east of these spaces; and

WHEREAS, the Board observed that cars entering or exiting these spaces could be blocked by cars waiting in the drive-through queue; and

WHEREAS, the Board also expressed concern that the queue of the ten required reservoir spaces began at the pick-up window, rather than the drive-through window; and

WHEREAS, in response, the applicant modified the site plan so that the lane for the drive-through facility is adjacent to the western edge of the lot and curves around the required accessory parking spaces that were relocated to the center of the lot, with a separate access lane, such that there is no potential conflict between cars proceeding to the parking spaces and cars proceeding through the drive-through facility; and

WHEREAS, the applicant also revised its site plan to correctly illustrate the ordering station as the beginning point of the 10-reservoir space queue for the drive-through facility, instead of the pick-up window; and

WHEREAS, however, upon further review of this revised site plan, the Board still had concerns regarding the turning radius for the lanes providing access to the accessory parking, and suggested to the applicant that a different configuration be reviewed; and

WHEREAS, in response to this concern, the applicant submitted a new site plan that again reconfigured the site, so that an appropriate turning radius is provided, a

WHEREAS, the Board has reviewed the revised site plan and finds that it is acceptable; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity because the existing restaurant does not generate

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significantly greater traffic flow than would be generated by other as of right commercial uses; and

WHEREAS, in support of this representation, the applicant conducted a survey of customer trips during peak hours that shows that between six and 13 visits per hour are generated; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle; and

WHEREAS, in support of this representation, the applicant states that the subject three-way intersection is a busy, high traffic volume area; and

WHEREAS, the applicant has submitted photographs of the premises and the surrounding streets, which further supports this representation; and

WHEREAS, the applicant represents that the restaurant will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, in support of this representation, the applicant states that the modest volume of customer traffic will not impact nearby residential uses; and

WHEREAS, at hearing, the Board questioned the need for the extended night and early morning hours proposed by the applicant (10 PM to 4 AM); and

WHEREAS, in response, the applicant submitted a letter from the President of the company that owns the restaurant, which states that 306 customer visits per week occur during these hours, which generates approximately \$5,000 in weekly operating capital; and

WHEREAS, the President also states that such income is critical to the continued viability of the restaurant; and

WHEREAS, the Board has reviewed this letter and agrees that the extended hours are necessary to the operation of the restaurant; and

WHEREAS, the Board also observes that the amount of customer visits averages to approximately 40 per day, spread out over a six hour period, which is an amount that should not adversely impact nearby residences; and

WHEREAS, accordingly, the Board has no objection to the proposed late night/early morning hours; and

WHEREAS, the applicant represents that adequate buffering between the drive-through facility and adjacent residential uses is provided; and

WHEREAS, as indicated on the revised site plan, this buffering consists of shrubbery along the western lot line and a portion of the northern lot line; and

WHEREAS, in support of this representation, the applicant states that the drive-through facility is located behind the restaurant building, approximately 100 ft. from the residential building to the south; and

WHEREAS, the applicant also states that none of the adjacent residential or community facility uses have lot line windows looking onto the parking lot, drive-through facility; and

WHEREAS, based upon its review of the submitted

evidence, the Board finds that the applicant has met the specific findings for a special permit set forth at ZR §73-243; and

WHEREAS, the Board finds that under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.06-BSA-017K dated September 14, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and grants a special permit under Z.R. §§ 73-03 and 73-243 for the legalization of an existing eating and drinking establishment (Use Group 6) with an accessory drive-through facility in a C1-3(R5) zoning district, which requires a special permit pursuant to Z.R. §§73-243 and 73-03; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 20, 2005"- (1) sheet; and *on further condition*:

THAT this permit shall be issued for a term of two years, to expire on January 24, 2008;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT the hours of operation shall be from 10 AM to 4

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AM daily;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all signage shall conform with the underlying C1-3 district regulations;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, January 24, 2006.

135-05-BZ

APPLICANT – Bryan Cave, LLP (Judith Gallent, Esq.) for L & M Equity Participants Ltd. And Harlem Congregations for Community Improvement, Inc. contract vendees.

SUBJECT – Application June 3, 2005 - under Z.R. §72-21 to allow the residential conversion of an existing non-complying building previously used as a school (former PS 90) located in an R7-2 district. The proposed conversion is contrary to Z.R. §§23-142, 23-533 and 23-633.

PREMISES AFFECTED – 217 West 147th Street, located on block bounded by West 147th and West 148th Streets and Adam Clayton Powell, Jr. and Frederick Douglas Boulevards, Block 2033, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Judith Gallent, Esq., Bryan Cave, LLP.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 19, 2005, acting on Department of Buildings Application No. 104110392, reads:

- “1. Proposed open space ratio (OSR) is contrary to Section 23-142 ZR.9+
2. Proposed building does not comply with Section 23-142 of the Zoning Resolution in that the F.A.R. exceeds the permitted.
3. Proposed building does not comply with Section 23-633 of the Zoning Resolution in that the building penetrates the initial setback distance along [the] street wall and exceeds the maximum base and building height.
4. Proposed rear yard (through lot) is contrary to Section 23-533 Z.R. (a), (b), and (c).”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a site within an R7-2 zoning district, the proposed conversion of a vacant six-story public school building to a 56-

unit residential building, with 103,062 sq. ft. of residential floor area on the first through sixth stories and 12,309 sq. ft. of community facility space in the cellar, which does not comply with applicable requirements for Open Space Ratio (OSR), Floor Area Ratio (FAR), setback, base and building height, and rear yard, contrary to Z.R. §§ 23-142, 23-633, and 23-533(a), (b)

THAT (c) is approval is limited to the relief granted by the Board in response to s

WHEREAS, a public hearing was held on this application on December 13, 2005, after due notice by publication in the *City Record*, and then to decision on January 24, 2006; and

WHEREAS, Community Board 10, Manhattan, did not take a position as to this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin; and

WHEREAS, the subject premises is a 29,975 sq. ft. rectangular through lot fronting on West 147th and West 148th Streets, on a block bounded by said streets and Adam Clayton Powell Jr. Blvd. (Seventh Avenue) and Frederick Douglas Blvd. (Eighth Avenue); and

WHEREAS, the property is currently improved upon with a six-story public school building, constructed in 1905-06, which in 1978, after being abandoned for many years, was declared obsolete for educational purposes by the NYC Board of Education (BOE); and

WHEREAS, fee ownership of this building is currently in the NYC Department of Housing Preservation and Development (HPD), which will dispose of the property through a Uniform Land Use Review Procedure (ULURP) action to be acted upon by the NYC City Planning Commission (CPC) at a later date; and

WHEREAS, this proposal also requires an amendment to the First Amended Bradhurst Urban Renewal Plan, since the site is within the boundaries of said Plan; this will also require a ULURP action at CPC; and

WHEREAS, these two ULURP actions will be pursued by HPD, and no building permits may be issued until they are approved by CPC; and

WHEREAS, the building is designed in an H-shaped configuration, with courtyard space fronting along the main entrance on West 148th Street and an elevated courtyard along West 148th Street; and

WHEREAS, the applicant states that the building is both architecturally and historically significant due to this design and its use of the Collegiate Gothic style in terms of arch, roofline, towers, and decorative features; and

WHEREAS, the applicant notes that the building is listed on the State and National Register of Historic Places as part of the West 147th-149th Streets Historic District; and

WHEREAS, in 2004, HPD designated two housing developers (L & M Equity Participants, Ltd. and Harlem Congregations for Community Improvement) as developers of the site, and specifically authorized these developers to rehabilitate the building as market-rate housing; and

WHEREAS, the applicant states that the proposed

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conversion and renovation of the building would preserve the existing H-shaped configuration, and would not involve any changes to the envelope of the building; only minor landscaping in the courtyard areas will be undertaken; and

WHEREAS, the streetwall would remain at approximately 83 ft., and the overall height would remain at 93'-2"; and

WHEREAS, lot coverage would remain at 62%, with 11,450 sq. ft. of open space in the courtyard areas; no rear yard would be provided; and

WHEREAS, no accessory parking spaces are required or will be provided; and

WHEREAS, although residential use is permitted in the subject R7-2 zoning district, because the site is within Community District 10, Manhattan, and not in Community Districts 1 through 6 (where a conversion would be allowed as-of-right pursuant to Article 1, Chapter 5 of the ZR), waivers of certain bulk requirements are needed; and

WHEREAS, specifically, the proposed conversion will result in the following non-compliances: a residential and total FAR of 3.43 (an FAR of 2.88 is the maximum permitted); an OSR of 10.77 (an OSR of 18.0 is the minimum required); a wall height of 83'-2" on West 147th Street and a wall height of 83'-11" on West 148th Street (60'-0" is the maximum wall height permitted); no rear yard (a rear yard of 60'-0" is required); and no setback (a 20'-0" setback is required); and

WHEREAS, the Board observes that the cellar community facility space does not count as FAR because of its cellar location; and

WHEREAS, the applicant states that the following is a unique physical condition which creates unnecessary hardship and practical difficulties in constructing a complying building: the school building is obsolete for its intended purpose as an educational facility, as evidenced by its small size and resulting limited capacity, the H-shape configuration, lack of compliance with present seismic code requirements, as well as by extensive water damage to the walls and ceilings, structural problems that would require extensive repair and reinforcement, outdated mechanical and electrical systems, and the presences of asbestos; and

WHEREAS, as to the building's configuration and limited capacity, the applicant states that the structure could only accommodate a 600 student high school, which is too small to address the BOE's needs; and

WHEREAS, moreover, the H-shaped configuration is an outmoded school building form that no longer comports with modern educational practice; and

WHEREAS, the BOE recognized the deficiencies of the design and size of the building for school purposes when it declared the building obsolete in 1978; and

WHEREAS, the applicant also notes that a rehabilitation of the building that would address the identified wall, ceiling and structural deficiencies and bring the building up to modern seismic codes would cost approximately 57 million dollars; and

WHEREAS, the applicant states that demolishing the building and constructing a new school building is similarly infeasible because such a proposal would cost approximately 78

million dollars; and

WHEREAS, the applicant further states that the building's obsolescence also causes practical difficulties in developing the site with a new complying residential building; and

WHEREAS, specifically, the applicant contends that demolition and asbestos removal costs are so significant that any return from an as-of-right development would be negatively impacted; and

WHEREAS, additionally, the applicant argues that the demolition of the building would constitute an unnecessary waste of a historically and architecturally significant building; and

WHEREAS, while the Board does not view this as an actual hardship, it does acknowledge the significant costs associated with demolition as an actual hardship; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical condition creates unnecessary hardship and practical difficulties in developing the site in compliance with the current applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following three scenarios: (1) a complying residential use alternative; (2) conversion of the building to 46 residential units (a residential FAR of 2.87), with community facility use in the cellar and a portion of the ground floor (a community facility FAR of 0.56); and (3) the proposal; and

WHEREAS, the analysis concluded that the first two scenarios would not realize a reasonable return, due to the costs associated with each; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the existing bulk of the building is consistent with buildings in the surrounding area, which is generally characterized by five and six story residential buildings, as well as six 27-story residential buildings to the east of the site; and

WHEREAS, additionally, preservation of the building would preserve its historic characteristics and would contribute to the cohesive character of the neighborhood; and

WHEREAS, the applicant states that the requested variances would not adversely affect adjacent residential uses or the use of the adjacent garage, since the proposed residential and community facility uses are as of right and the proposed density is appropriate to the subject R7-2 zoning district; and

WHEREAS, the applicant notes that the conversion of the building would not have any significant impacts on land use, socioeconomic conditions, traffic or any other area studied in the Environmental Assessment Statement (EAS); and

WHEREAS, additionally, the EAS reviewed a proposal

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with a density of 75 residential units and concluded that said density would not have any foreseeable impacts on the environment; and

WHEREAS, accordingly, should the applicant so desire, the density may be increased up to 75 units, so long as the building envelope does not change and the residential and total FAR remains at 3.43; a condition to this effect is made a part of this resolution; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the feasibility analysis studied a lesser variance proposal with a reduced residential FAR and density and concluded that such a proposal would not realize a reasonable return; and

WHEREAS, therefore, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, HPD has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06HPD004M dated September 29, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, HPD has determined that no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the HPD has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals adopts a Negative Declaration issued by the NYC Department of Housing Preservation and Development on December 9, 2005 and the adoption becomes effective on the

date of this grant, under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. § 72-21 and grants a variance to permit, on a site within an R7-2 zoning district, the proposed conversion of a vacant six-story public school building to a 56-unit residential building, with 103,062 sq. ft. of residential floor area on the first through sixth stories and 12,309 sq. ft. of community facility space in the cellar, which does not comply with applicable requirements for Open Space Ratio, Floor Area Ratio, setback, base and building height, and rear yard, contrary to Z.R. §§ 23-142, 23-633, and 23-533(a), (b) and (c); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received January 10, 2006”- seven (6) sheets and “Received January 12, 2006” – one (1) sheet; and *on further condition*:

THAT the bulk parameters of the proposed building following shall be as follows: a total and residential FAR of 3.43; wall heights of 83’-2” on West 147th Street and 83’-11” on West 148th Street; no rear yard or setback; and an Open Space Ratio of 10.77;

THAT the total amount of residential units may be increased up to 75 without further review or approval of the Board, so long as the existing envelope of the building does not change and the residential FAR remains at 3.43; the applicant shall notify the Board if this change is made;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 24, 2006.

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138-05-BZ

APPLICANT – Lewis Garfinkel, for Devorah Fuchs, owner.
SUBJECT – Application June 6, 2005 – under Z.R. §73-22 to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and open space per Z.R. §23-141(a), the side yard Z.R. §23-461(a) and the rear yard Z.R. §23-47 is less than the minimum required of the Zoning Resolution. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1227 East 27th Street, east side of 27th Street, Block 7645, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
Negative:.....0
Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 1, 2005, acting on Department of Buildings Application No. 301951136, reads:

1. Plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted .5.
2. Plans are contrary to Z.R. 23-141(a) in that the proposed Open Space Ratio (OSR) exceeds the required 1.50.
3. Plans are contrary to Z.R. 23-461(a) in that the proposed side yard at the rear is less than the minimum requirement 12’-5”.
4. Plans are contrary to Z.R. 23-47 in that the existing and proposed rear yard is less than the minimum requirement 30’-0”.”; and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), Open Space Ratio (OSR), and side and rear yards, contrary to Z.R. §§ 23-141(a), 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on December 6, 2005, after due notice by publication in *The City Record*, and then to decision on January 24, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the east side of East 27th Street, between Avenues L and M; and

WHEREAS, the subject lot has a total lot area of 3,750 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 3,116 sq. ft. (0.83 Floor Area Ratio or “FAR”) to 3,329 sq. ft. (0.89 FAR); the maximum floor area permitted is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the OSR from 73.5% to 61.8%; the minimum required OSR is 150%; and

WHEREAS, the proposed enlargement of the existing building will increase the width of one the non-complying side yards from 2’-0” to 4’-0” at the rear by altering the existing enclosed porch to make it aligned with the rest of the building; however, this width is still non-complying; and

WHEREAS, the proposed enlargement building will extend the other 8’-5” non-complying side yard; however, the width of the side yard will be maintained; and

WHEREAS, the proposed enlargement will reduce the rear yard from 23’-4” to 20’-0””; the minimum rear yard required is 30’-0””; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, Open Space Ratio, and side and rear yards, contrary to Z.R. §§ 23-141(a), 23-461(a) and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received September 28, 2005”-(2) sheets, “January 9, 2006”-(5) sheets and “January 20, 2006”-(3) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the

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certificate of occupancy;

THAT the total FAR on the premises, including the attic, shall not exceed 0.89;

THAT the total attic floor area shall not exceed 592 sq. ft., as confirmed by the Department of Buildings;

THAT DOB shall review and approve the location of any garage

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 24, 2006.

202-04-BZ

APPLICANT – Einbinder & Dunn, LLP, for 202 Meserole, LLC, owner.

SUBJECT – Application May 24, 2004 – under Z.R. §72-21 – to permit the proposed conversion of a vacant industrial building, into a 17 unit multiple dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10. PREMISES AFFECTED – 100 Jewel Street, southeast corner of Meserole Street, Block 2626, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jeffrey C and Kamal Bandyopadhyay.

VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to March 7, 2006, at 10 A.M., for decision, hearing closed.

245-04-BZ

APPLICANT – Agusta & Ross, for Mark Stern, owner.

SUBJECT – Application July 6, 2004 – under Z.R. §72-21 – to permit the proposed five-story, nine unit multiple dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 102/04 Franklin Avenue, west side, 182’ south of Park Avenue, Block 1898, Lots 45 and 46, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Mitchell Ross.

VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to March 7, 2006, at 10 A.M., for decision, hearing closed.

289-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Judo Associates, Inc., lessee.

SUBJECT – Application August 18, 2004 – under Z.R. §72-21 – to permit the proposed construction of a seven story mixed-use building, to contain commercial use on the ground floor, and residential use above, located within an M1-5B zoning district, which does permit residential use, is contrary to Z.R. §42-00 and §42-14.

PREMISES AFFECTED – 341 Canal Street, southeast corner of Greene Street, Block 229, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel, Jack Freeman and Gene Kaufman.

For Opposition: Barry Mallin, Barbara Simon, Isabel Swift and D. James Dee.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to March 14, 2006, at 10 A.M., for decision, hearing closed.

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351-04-BZ

APPLICANT - The Agusta Group, for Stahva Realty, owner.
SUBJECT – Application November 1, 2004 - under Z.R.§73-44 – to allow parking reduction for proposed enlargement of existing office building located in an R6B/C2-2.

PREMISES AFFECTED - 210-08/12 Northern Boulevard, thru lot between Northern Boulevard and 45th Road, 150' east of 211th Street, Block 7309, Lots 21 and 23 (Tentative Lot 21), Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD - Laid over to March 14, 2006, at 10 A.M., for continued hearing.

40-05-BZ

APPLICANT – Petraro & Jones for Rafael Sassouni, owner; Graceful Services, Inc., lessee.

SUBJECT - Application April 21, 2005 – under Z.R. §73-36 to permit a legalization of a physical cultural establishment to be located on the second floor of four story mixed use building. The PCE use will contain 285 square feet to be used in conjunction with an existing physical cultural establishment on the second floor (988 Square feet)located at 1097 Second Avenue, Manhattan.

PREMISES AFFECTED – 1095 Second Avenue, west side of Second Avenue , 60.5 feet south of intersection with East 58th Street, Block1331, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Patrick W. Jones.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to March 14, 2006, at 10 A.M., for decision, hearing closed.

52-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Coptic Orthodox Church of St. George, owner.

SUBJECT – Application March 4, 2005 - under Z.R.§72-21 Proposed development of a six-story and cellar building, with community use on floors one through three, residential use on floors three through six, and with parking in the cellar, located in a C1-2 within an R5 zoning district.

PREMISES AFFECTED - 6209 11th Avenue, northeast corner of 63rd Street, Block 5731, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Richard Lobel and Fr. Armia Toufiles.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for continued hearing.

77-05-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre Carson, for Jack Ancona, owner.

SUBJECT – Application March 29, 2005 – under Z.R. §72-21 – to permit the proposed construction of a twelve-story mixed building, containing residential and retail uses, located within an M1-6 zoning district, in which residential use is not permitted as of right, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 132 West 26th Street, south side, 364.5' west of Sixth Avenue, Block 801, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES -

For Applicant: Deirdre Carson and Jack Freeman.

For Opposition: Stuart Klein.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February 28, 2006, at 10 A.M., for decision, hearing closed.

94-05-BZ

APPLICANT – Eric Palatnik, P.C., for Abraham Bergman, owner.

SUBJECT – Application April 20, 2005 – under Special Permit ZR §73-622 to permit the enlargement of a single family residence to vary ZR sections 23-141 for the increase in floor area and open space, 23-461 for less than the required side yards and 23-47 for less than the required rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1283 East 29th Street, East 29th Street, north of Avenue M, Block 7647, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 14, 2006, at 1:30 P.M., for continued hearing.

108-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 - under Z.R.§72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #74, the companion case, 109-05-BZ is Tax Lot #76 on the same zoning lot.

PREMISES AFFECTED – 224-22 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 13, Borough of Queens.

COMMUNITY BOARD #13

APPEARANCES –

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For Applicant: Adam W. Rothkrug

For Opposition: Judith Clarrington

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for continued hearing.

109-05-BZ

APPLICANT - Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #76, the companion case, 108-05-BZ is Tax Lot #74 on the same zoning lot.

PREMISES AFFECTED – 224-26 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 76, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Judith Clarrington.

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for continued hearing.

124-05-BZ

APPLICANT – Greenberg Traurig LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.

SUBJECT – Application May 20, 2005 – under Z.R. §72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to ZR §35-00, 23-145, 35-52, 23-82, 13-143, 35-24, & 13-142(a).

PREMISES AFFECTED – 482 Greenwich Street, Block 7309, Lot 21 & 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre A. Carson, Thomas McKay, Garrett Gourlay, Jack Freeman and Richard Barrett.

For Opposition: David Reck, CB#2, Patrick McDonough, Richard Herschlag, P.E., Geoffrey Hendricks, Victoria Faust, Rolland A. Hollander, Kate Koster, and Eric Liftin.

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for continued hearing.

130-05-BZ

APPLICANT – Elise Wagner, Esq., Kramer Levin, for Hudson Island, LLC, owner.

SUBJECT – Application May 25, 2005 – under Z.R. §72-21 to permit the development of a mixed-use, nine-story building with ground level retail, and a small amount of community facility space, and approximately 25 residential units on the upper floors within an M1-5B zoning district.

PREMISES AFFECTED – 74-88 Avenue of the Americas, a/k/a 11-15 Thompson Street and 27-31 Grand Street, east side of Avenue of the Americas, between Grand and Canal Streets, Block 227, Lots 50, 52 and 56, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for continued hearing.

132-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sami Alboukai, owner.

SUBJECT – Application- under Z.R. §73-622 – to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per ZR 23-141, a rear yard less than the minimum per ZR 23-47 and a perimeter wall height greater than the maximum per ZR23-31. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 220 West End Avenue, west side of West End Avenue between Oriental Boulevard and Esplanade, Block 8724, Lot 158, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Annette Jaret, Judith Tsaron, Shari Thaler, and Flori Kostoff.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for continued hearing.

164-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for 2241 Westchester Avenue Realty Corp., owner; Gotham City Fitness LLC, lessee.

SUBJECT – Application April 22, 2004 – under Z.R. §73-36 to permit the proposed physical culture establishment, located on the second floor of an existing two story commercial building, located in C2-6 within an R6 zoning district, is contrary to Z.R. §32-00.

PREMISES AFFECTED - 2241 Westchester Avenue, aka 2101 Glebe Avenue, Block 3963, Lot 57, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Eric Palatnik.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to February 28, 2006, at 10 A.M., for decision, hearing closed.

187-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for

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Salvatore Porretta and Vincenza Porretto, owners.

SUBJECT – Application August 9, 2005 – under Z.R. §72-21– Propose to build a two family dwelling that will comply with all zoning requirements with the exception of two non-complying side yards and undersized lot area due to a pre-existing condition.

PREMISES AFFECTED – 78-20 67th Road, Southerly side of 67th Road, 170’ easterly of 78th Street, Block 3777, Lot 17, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to February 28, 2006, at 1:30 P.M., for continued hearing.

Pasquale Pacifico, Executive Director.

Adjourned: 7:45 P.M.

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**SPECIAL HEARING
WEDNESDAY MORNING, JANUARY 25, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.

174-05-A

APPLICANT – Norman Siegel on behalf of Neighbors
Against N.O.I.S.E., GVA Williams for (Hudson Telegraph
Associates, LP) owner; Multiple lessees.

SUBJECT – Application July 29, 2005 – Neighbors against
N.O.I.S.E. is appealing the New York City Department of
Buildings approval of a conditional variance of the New York
City Administrative Code §27-829(b)(1) requirements for
fuel oil storage at 60 Hudson Street.

PREMISES AFFECTED – 60 Hudson Street, between Worth
and Thomas Streets, Block 144, Lot 40, Borough of
Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Norman Siegel, Doris Diether, Tim Lannan,
Luis E. Reyes, Catherine Skopic, Glenn Corbett, Roger
Byron, Eric Zwerling, Alan J. Gerson, Madelyn Wils, July
Menin, Alyssa Ziegel, on behalf of Assemblymember
Deborah J. Glick; Mary Cooley on behalf of Manhattan
Borough President Scott Stringer; Charles Komanoff, Senator
Connors, Sally Regenhard, Skycraper Safety Campaign; Julie
Nadel, Bruce Ehrmann, Todd Stone, Jean B. Grillo, Azrt
Dehkan, Deborah Allen and Lori Stone.

For Administration: Phylis Arnold, Department of Buildings.

ACTION OF THE BOARD – Laid over to May 10,
2006, at 1:30 P.M., for continued hearing.

Pasquale Pacifico, Executive Director.

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 91, No. 6

February 9, 2006

DIRECTORY

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SATISH BABBAR, *Vice-Chair*

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CHRISTOPHER COLLINS

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Tuesday, January 31, 2006**

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382-04-BZ	2026 Avenue "T", Brooklyn
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72-05-BZ	245 Hooper Street, Brooklyn
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171-05-BZ	568 Broadway, a/k/a 69-79 Prince Street and 108-112 Crosby Street, Manhattan
172-05-BZ	50 Court Street, a/k/a 194-204 Joralemon Street, Brooklyn
195-05-BZ	2906 Quentin Road, Brooklyn
196-05-BZ	2315 Quentin Road, Brooklyn

DOCKETS

New Case Filed Up to January 31, 2006

14-06-A

54 Graham Place, S/S Graham Place 158.86' W/O Beach 20th Street, Block 16350, Lot 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed to reconstruct and enlarge existing single family dwelling not fronting a mapped street.

16-06-BZ

2253 East 14th Street, West side , between Avenue V and Gravesend Neck Road, Block 7375, Lot 50, Borough of **Brooklyn, Community Board: 15.** SPECIAL PERMIT-73-622-To permit the proposed enlargement of a one family home, which creates non-compliances with respect to open space and floor area (ZR 23-141), side yards (ZR 23-461) and rear yard (ZR 23-47).

17-06-BZ

99-24 39th Avenue, South side, 167.9 east of Roosevelt Avenue, between Roosevelt & 101st Street, Block 1765, Lot 40, Borough of **Queens, Community Board: 3.** Under 72-21-To permit the proposed demolition of a two story residential building and erect a four story commercial/residential mixed use structure.

18-06-A

99-24 39th Avenue, South side, 167.9' east of Roosevelt Avenue, between Roosevelt & 101st Street, Block 1765, Lot 40, Borough of **Queens, Community Board: 3.** General City Law Section 35-Submitted with a campion BZ application.

19-06-BZ

745 Fox Street, Encompasses the 200-ft of the block front on S/Sof 156th & 100 ft on Fox & Beck, Block 2707, Lot 11, Borough of **Bronx, Community Board: 2.** Under 72-21-To permit a proposed eight-story residential building which requires variance of ZR 23-145 (floor area), 23-633 (height and setback), 25-25c (parking), 23-851 (court regulations) and (legal window).

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

MARCH 28, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 28, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

410-68-BZ

APPLICANT – Sheldon Lobel, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application January 21, 2006 – Extension of time to complete construction and to obtain a certificate of occupancy pursuant to Z.R.§11-412.

PREMISES AFFECTED – 85-05 Astoria Boulevard, Block 1097, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

357-72-BZ

APPLICANT - Law Office of Fredrick A. Becker, for Permanent Mission of the Russian Federation to the U.N., owner.

SUBJECT - Application December 19, 2005 - Amendment to a previously granted Variance ZR 72-21 for a multiple dwelling and community facility complex to allow for the enclosure of an existing swimming pool and the enlargement of an accessory health and sports facility. The premise is located in an R-4 zoning district.

PREMISES AFFECTED - 355 West 255th Street, northwest corner of West 255th Street and Fieldston Road, Block 5846, 5848, Lots 1605, 1774, Borough of The Bronx.

COMMUNITY BOARD #8BX

7-95-BZ

APPLICANT – Francis R. Angelino, Esq., c/o DeCampo, for Redmont Realty Company, LLC, owner; Town Sports International, Inc., lessee.

SUBJECT – Application September 13, 2005 – Reopening for an extension of term and an amendment of a previously granted variance to permit, in a C1-2(R3-2)/R3-2 district, a physical culture establishment (health club) in a cellar and two-story building within a larger shopping center development, which does not conform to district use regulations.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

1038-80-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corp,

lessee.

SUBJECT – December 1, 2005 - Extension of Term of a Special Permit for an amusement arcade (UG15) in an M2-1 zoning district which expired on January 6, 2006.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

280-01-BZ

APPLICANT – Stadtmauer Bailkin LLP & Cozin O'Connor, for Perbinder Holdings, LLC, owner; Metropolitan Transportation Auth., lessee.

SUBJECT – Application January 23, 2006 - Extension of Time to complete construction for a variance ZR§72-21 to permit a mixed use building located in a C1-9 zoning district.

PREMISES AFFECTED – 663/673 Second Avenue & 241/249 East 36th Street, Block 917, Lots 21, 24/30, 32 & 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

222-04-A thru 224-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, & Spector, LLC for Dalip Karpuzi, owner.

SUBJECT - Application filed June 1, 2004 - to permit construction of a three one family dwellings in the bed of a final mapped street (Pemberton Avenue) contrary to Article 3, Section 35 of the General City Law . Premises is located within an R3-1 (SRD) Zoning District.

PREMISES AFFECTED - 486 Arthur Kill Road, & 120 , 122 Pemberton Avenue Block 5450, Lots 37, 35 & 36, Borough of Staten Island.

COMMUNITY BOARD #3SI

370-04-A

APPLICANT - Rothkrug, Rothkrug, Weinberg & Spector , LLC for Edgewater Developers and Builders. Inc., Owner.

SUBJECT - Application filed November 23, 2004 - to permit construction of a one family dwelling in the bed of a final mapped street (Egdewater Road) contrary to Article 3, Section 35 of the General City Law . Premises is loated within an R2 Zoning District.

PREMISES AFFECTED - 1511 Egmont Place, north side of Egmont Place 705.9 ft east of Mott Avenue, Block 15685, Lot 48, Borough of Queens.

COMMUNITY BOARD #14Q

370-05-BZY

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for Affirmation Arts Limited, owner.

CALENDAR

SUBJECT - Application December 22, 2005 - Proposed extension of time to complete construction pursuant to Z.R. 11-332 for a one story and mezzanine addition to an existing three-story building, previously located in a C6-2(CC) zoning district. The current zoning district is now C6-2(HY).

PREMISES AFFECTED - 523 West 37th Street, interior lot, block bounded by West 37th and West 38th Streets, Tenth and Eleventh Avenues, Block 709, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #4M

371-05-A

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for Affirmation Arts Limited, owner.

SUBJECT - Application December 22, 2005 - An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to complete construction pursuant to Z.R. 11-332 for a one story and mezzanine addition to an existing three-story building, previously located in a C6-2(CC) zoning district. The current zoning district is now C6-2(HY).

PREMISES AFFECTED - 523 West 37th Street, interior lot, block bounded by West 37th and West 38th Streets, Tenth and Eleventh Avenues, Block 709, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #4M

following matters:

ZONING CALENDAR

129-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Laurence Roberts, owner.

SUBJECT – Application May 24, 2005 - Special Permit under ZR §§73-622 to allow the enlargement of a single family residence which is contrary to ZR23-141 for floor area and open space and ZR 23-47 for rear yard waiver. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1161 East 21st Street, East 21st Street, between Avenue J and Avenue K, Block 7603, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

163-05-BZ

APPLICANT – Harold Weinberg, for Aaron (Ari) Presser, owner.

SUBJECT – Application July 19, 2005- Special Permit - pursuant to ZR§73-622 for the enlargement of single family home which seeks to vary ZR§23-141 for the increase in floor area and open space ratio, ZR§23-47 for less than the minimum 30' rear yard required and ZR§23-461 for less than the required side yard. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1134 28th Street, west side, 260' south of Avenue K, Block 7627, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #14BK

182-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4 Park Avenue Associates, owner.

SUBJECT – August 4, 2005 – Under Z.R. §73-36 to allow the legalization of a physical culture establishment in a C5-3 zoning district.

PREMISES AFFECTED – 4 Park Avenue, between East 33rd and East 34th Streets, Block 863, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #5M

MARCH 28, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 28, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the

CALENDAR

193-05-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 32 East 31st Street Corp., owner; Forever Young Spa Inc., lessee.

SUBJECT – Application August 16, 2005 – Under Z.R. 73-36 to allow the operation of a physical culture establishment in the cellar, first floor and first floor mezzanine of a ten story commercial building which is contrary to §32-21 Z.R. PREMISES AFFECTED – 32 East 31st Street, East 31st Street between Park & Madison Avenues, Block 860, Lot 55, Borough of Manhattan

COMMUNITY BOARD #5M

202-05-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.

SUBJECT – Application August 24, 2005 – Under Z.R. to §73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district. PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens

COMMUNITY BOARD #7Q

323-05-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for DB Real Estate Enterprises, LLC, owner.

SUBJECT – Application November 9, 2005 – Under Z.R. §72-21 to allow a proposed two-family dwelling that does not provide a required side yard in an R5 Zoning District; contrary to ZR §23-461(b).

PREMISES AFFECTED – 488 Logan Street, West side of Logan Street, 190ft south of intersection with Pitkin Avenue, Block 4227, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

Pasquale Pacifico, Executive Director

Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL HEARING**350-05-BZY**

APPLICANT – Eric Palatnik, P.C., for 49 Properties, LLC, owner.

SUBJECT - Application December 08, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 4 story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 245 16th Street, Brooklyn, north side between 4th and 5th Avenue, Block 1048, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #7BK

353-05-BZY

APPLICANT - Cozen & O'Connor for Emet Veshlom Development, LLC, owner.

SUBJECT - Application December 14, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

354-05-BZY

Cozen & O'Connor for Global Development, LLC, owner.

Application December 14, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a 62 unit 11 story multiple dwelling under the prior Zoning R6. New Zoning District is R6B/ C2-3 as of November 16, 2005.

PREMISES AFFECTED - 182 15th Street, Brooklyn, south side of 15th Street, 320 feet west of 5th Avenue, Block 1047, Lot 22 Borough of Brooklyn.

COMMUNITY BOARD #7BK

MARCH 29, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 29, 2006, 10:00 A.M., at 40

CALENDAR

355-05-BZY

APPLICANT – Rothkrug, Rothkrug, Weinberg , Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.

Application December 14, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED - 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue , Block 869, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

360-05-BZY

APPLICANT - Greenberg & Traurig , LLP for 400 15th Street, LLC, owner.

SUBJECT - Application December 14, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED - 400 15th Street, Brooklyn, south side of 15th Street, 205'feet 5" west of intersection of 8th Avenue and 15th Street , Borough of Brooklyn

COMMUNITY BOARD #7BK

362-05-BZY

APPLICANT - Greenberg & Traurig, LLP for 6 on 6th LLC, owner.

SUBJECT - Application December 16, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a six story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 639 Sixth Avenue, Brooklyn, east side of Sixth Avenue 128'2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

367-05-A

APPLICANT - Greenberg & Traurig, LLP for 6 on 6th Avenue, LLC, owner.

SUBJECT - Application December 22, 2005 - An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 639 Sixth Avenue, east side of Sixth Avenue, 128'-2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

368-05-A

APPLICANT - Greenberg & Traurig , LLP for 400 15th

Street, LLC., owner.

SUBJECT - Application December 22, 2005 - An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED - 400 15th Street, south side of 15th Street, 205'-5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

Pasquale Pacifico, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, JANUARY 31, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meeting of the Board held on Tuesday morning and afternoon, November 15, 2005, as printed in the bulletin of November 24, 2005, Vol. 90, Nos. 47-48. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

1005-66-BZ

APPLICANT – Moshe M. Friedman, P.E., for Chelsea Town Company, owner.

SUBJECT – Application November 22, 2005 – Request for a waiver of Rules of Procedure and reopening for the Extension of Term of a variance previously granted under Section 60(1b) of the Multiple Dwelling Law, which expired May 2, 2002, for transient parking of unused and surplus tenant spaces within the accessory garage. Transient parking is limited to twenty-two cars. The premise is located in an R8B zoning district.

PREMISES AFFECTED – 320 West 30th Street, a/k/a 314-322 West 30th Street, south side of West 30th Street, 202' west of 8th Avenue, Block 753, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an extension of term of a previously issued grant to allow transient parking in accessory garage; and

WHEREAS, a public hearing was held on this application on January 10, 2006, after due notice by publication in *The City Record*, and then to decision on January 31, 2006; and

WHEREAS, Community Board No. 5, Manhattan, recommended approval of this application; and

WHEREAS, on May 2, 1967, the Board granted an application pursuant to Section 60(1)(b) of the Multiple Dwelling Law (“MDL”) under the subject calendar number to permit the use of transient parking for the unused and surplus parking spaces in a multiple dwelling accessory garage, in addition to tenant and monthly parking, on condition that the transient parking spaces shall not exceed twenty-two (22) in

number; and

WHEREAS, the term of the variance was extended for a period of ten years on February 8, 1984 and June 13, 1995; the last expiration date was May 2, 2002; and

WHEREAS, the Board has reviewed the submitted materials and agrees that the requested extension of term is appropriate to grant.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, *reopens and amends* the resolution pursuant to Section 60(1)(b) of the MDL, said resolution having been adopted on May 2, 1967, as subsequently extended, so that as amended this portion of the resolution shall read: “granted for a term of ten (10) years from May 2, 2002, to expire on May 2, 2012; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received August 16, 2005’–(2) sheets and ‘November 22, 2005’–(2) sheets; and *on further condition*;

THAT the number of daily transient parking spaces shall be no greater than 22;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the layout of the parking garage shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 104088345)

Adopted by the Board of Standards and Appeals,
January 31, 2006.

386-74-BZ

APPLICANT – Stadtmauer Bailkin/Steve Sinacori, for Riverside Radio Dispatcher, Inc., owner.

MINUTES

SUBJECT – Application October 19, 2005 – Reopening for an amendment to Z.R. 72-21 a Variance application to permit the erection of a one story building for use as an automobile repair shop which is not a permitted use. The proposed amendment pursuant to ZR 52-35 for the change of use from one non-conforming use (Automotive Repair Shop UG16) to another non-conforming use (Auto Laundry UG16) is contrary to the previously approved plans. The premise is located in C4-4 zoning district.

PREMISES AFFECTED – 4184/4186 Park Avenue, east side of Park Avenue, between East Tremont Avenue and 176th Street, Block 2909, Lot 8, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Richard Bowers.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION -

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance, to permit a change of use from an automobile repair shop to an automobile laundry (a car wash); and

WHEREAS, a public hearing was held on this application on November 22, 2005, after due notice by publication in *The City Record*, with a continued hearing on January 10, 2006, and then to decision on January 31, 2006; and

WHEREAS, a committee of the Board conducted a site visit of the premises; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, the subject premises is located on the east side of Park Avenue between East Tremont Avenue and 176th Street, and has a total lot area of approximately 14,892.54 sq. ft.; and

WHEREAS, the site is located within a C4-4 zoning district; and

WHEREAS, the site is improved upon with a 5,000 sq. ft. one-story building formerly occupied as a use Group 16 automobile repair facility, but which is now vacant; and

WHEREAS, on February 11, 1975, the Board granted a variance under the subject calendar number to permit the erection of this one-story building and its occupancy as an automotive repair facility; and

WHEREAS, the applicant represents that the current owner desires to convert the building to a UG 16 automobile laundry, that would serve its fleet of livery cars, nearby automotive uses, and the nearby residential community; the facility would also provide hand detailing, waxing, and vacuuming, as well as an accessory retail store and coffee shop; and

WHEREAS, the applicant states that the facility will

operate 24 hours per day; and

WHEREAS, at hearing, the Board expressed concern about the proposed layout; specifically, the following issue was identified: the proposed drying area appeared to be too small to accommodate the amount of cars using the car wash, having space for only three cars, which could lead to car washing activity taking place on the side walk or street, or back up of cars onto the street; and

WHEREAS, the applicant responded by increasing the capacity of the drying area to four cars, and also explained that cars move through the car wash at a rate that allows drying to occur in a reasonable time frame (two to three minutes) with a drying area with a four car capacity; and

WHEREAS, the Board finds the modification and explanation acceptable; and

WHEREAS, at hearing, the Board also asked the applicant to explain any potential impact the car wash might have on the surrounding community; and

WHEREAS, the applicant responded by noting that the surrounding uses were mostly commercial and automotive, except for a multiple dwelling to the north of the site; the applicant states that a 10 ft. high wall will be installed on this side of the site that will act as a screen; and

WHEREAS, the Board was also concerned about the height of the temporary shed at the rear of the property; the applicant responded that it will be no greater than 10 ft. in height; and

WHEREAS, finally, at hearing, the Board expressed concern regarding the existing curb cuts and the need for a pedestrian sidewalk; in particular, the Board asked that the curb cut nearest to the pedestrian entry be eliminated; and

WHEREAS, in response, the applicant submitted a revised site plan that eliminated the offending curb cut and that illustrated a new sidewalk near the pedestrian entry; and

WHEREAS, based upon the submitted evidence, the Board finds the requested amendment appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on February 11, 1975, so that as amended this portion of the resolution shall read: “to permit the change in use from Use Group 16 automobile repair facility to Use Group 16 automobile laundry, *on condition* that all work shall substantially conform to drawings as filed with this application, marked ‘Received October 19, 2005’ – (2) sheets and ‘January 16, 2006’ – (2) sheets; and *on further condition*:

THAT no carwash activities shall be conducted on the sidewalks or streets abutting the site;

THAT all landscaping and fencing shall be installed and/or maintained as shown on the BSA-approved plans;

THAT the shed at the rear of the property shall be no greater than 10 ft. high;

THAT all signage comply with applicable C4-4 district regulations;

THAT the above condition shall be listed on the certificate of occupancy;

MINUTES

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 200868098)

Adopted by the Board of Standards and Appeals, January 31, 2006.

648-42-BZ

APPLICANT – Sheldon Lobel, P.C., for Abenaa Frempong, owner.

SUBJECT – Application August 11, 2005 - Pursuant to ZR §11-413 this application seeks to change the ground floor use from previously approved manufacture of ferrous and non-ferrous metal products (UG16) to music studio (UG9). The owner also seeks to construct an as-of- right two family residences on two additional floors, thereby making this a proposed three story building. The premise is located in an R-6 zoning district.

PREMISES AFFECTED – 28 Quincy Street, between Classon Avenue and Downing Street, Block 1972, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to February 28, 2006, at 10 A.M. for continued hearing.

7-57-BZ

APPLICANT – Ruth Peres, Esq., for Kapsin & Dallis Realty Corp., owner; Ruth Peres, lessee.

SUBJECT – Application December 15, 2005 – Pursuant to ZR §11-411 for an Extension of Term of a gasoline service station which expired on September 30, 2005. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 2317-27 Ralph Avenue – 1302-1320 East 65th Street, southeast corner of Ralph Avenue and Avenue M, Block 8364, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ruth Peres and Peter Leong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 28, 2006, at 10 A.M., for decision, hearing closed.

374-71-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Evelyn DiBenedetto, owner; Star Toyota, lessee.

SUBJECT – Application filed pursuant to ZR §§72-01 and 72-22 for an extension of term of a variance permitting an automobile showroom with open display of new and used cars (UG16) in a C2-2 (R3-2) district. The application also seeks an amendment to permit accessory customer and employee parking in the previously unused vacant portion of the premises.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 6269, Lots 14 and 20, located on the North West corner of Northern Boulevard and the Clearview Expressway, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Adam Rothkurg and Michael Koufakir.

For Objection: Terri Pouymari, Kevin Vallone, Henry Euler and Theresa Wallace.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for continued hearing.

111-94-BZ

APPLICANT – Ari Goodman, Esq., for 2502 8th Avenue Corp., owner; Michael Williams, lessee.

SUBJECT – Application May 4, 2005 – Extension of term of a Special Permit for the vacant portion of a lot to be used for accessory parking for the commercial uses on the built portion of the site and as incidental monthly/overnight parking for the residential neighbors. The site is located in a C1-4/R-8 zoning district.

PREMISES AFFECTED – 3543-49 Broadway, a/k/a 601 West 145th Street, northwest corner intersection of Broadway and West 145th Street, Block 2092, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ari Goodman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 28, 2006, at 10 A.M., for decision, hearing closed.

165-02-BZ thru 190-02-BZ

APPLICANT – Stuart A. Klein, Esq./Steve Sinacori, Esq., for Park Side Estates, LLC., owner.

SUBJECT – Application March 31, 2005- Reopening for an amendment to BSA resolution granted under calendar numbers 167-02-BZ, 169-02-BZ, 171-02-BZ, 173-02-BZ and 175-02-BZ. The application seeks to add 5 residential units to the overall development (encompassing lots 21 and 28) for a total of 37, increase the maximum wall height by 2'-0", and increase the number of underground parking spaces from 11

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to 20, while remaining complaint with the FAR granted under the original variance, located in an M1-1 zoning district.

PREMISES AFFECTED – 143-147 Classon Avenue, a/k/a 380-388 Park Avenue and 149-159 Classon Avenue, southeast corner of Park and Classon Avenues, Block 1896, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Steven Sinacori.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

177-05-A

APPLICANT – Joseph Sherry for Breezy Point Cooperative, owner Raymond Reis, lessee.

SUBJECT – Application August 2, 2005 – Proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street and located partially in the bed of a mapped street (Oceanside Avenue), are contrary to both Section 35 and Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system located in the bed of a mapped street is contrary to the Buildings Department Policy.

PREMISES AFFECTED – 5 Arcadia Walk, E/S 24.87 S/O Mapped Breezy Point Blvd, Block 16350, part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 25, 2005, acting on Department of Buildings Application No. 402117311, reads:

“A1- The Site is located partially in the bed of mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 35 of the General City Law;

A2- The site and building is not fronting on an official mapped street therefore, no permit or Certificate of Occupancy can be issued as per Art. 3, Sect 36 of the General City Law; also no permit can be issued since the proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291- (C26-401.1) of the Administrative Code of the City

of New York.

A3- The private disposal system is in the bed of a mapped street which is contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on January 31, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated August 22, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 31, 2005, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, by letter dated November 28, 2005, the Department of Transportation states that it has reviewed the project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, July 25, 2005, acting on Department of Buildings Application No. 402117311, is modified by the power vested in the Board by Section 36 And Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 2, 2005”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 31, 2006.

181-05-A

APPLICANT – Walter T. Gorman, P.E. Breezy Point Cooperative, owner Donald & Connie & Jones, lessee.

SUBJECT – Application August 3, 2005 – Proposed to construct a two story home which does not fronting on mapped street, which is contrary to Section 36, Article 3 of the General City Law, also in the bed of a mapped street (Beach 207th Street) contrary to Section 35, General City Law and the installation of a new septic system located in the bed of a mapped street is contrary to the Buildings Department Policy. Located in an R-4 Zoning District

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PREMISES AFFECTED – 22 Atlantic Walk w/s 3.59 North of Breezy Point Boulevard, Block 16350, part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 9, 2005, acting on Department of Buildings Application No. 402182810, reads:

- “1. Proposal to construct a two story (2) home and install a new septic system on a site which lies within an R-4 district is contrary to Article 3, Section 36 (2) of the General City Law (GCL) in that the site does not front on a mapped street (Atlantic Walk) and is contrary to Article 3, Section 35 of the General City Law in that the home and septic system will lie within the bed of a street which is mapped (Beach 207th), and contrary to Section 27-291 of the NYC Building Code and must therefore be referred back to the Board of Standards and Appeals for approval”; and

WHEREAS, a public hearing was held on this application on January 31, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated August 22, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 31, 2005, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, by letter dated November 28, 2005 , the Department of Transportation states that it has reviewed the project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, December 9, 2005, acting on Department of Buildings Application No. 402182810, is modified by the powers vested in the Board by Section 36 and Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received December 16, 2005”–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the

Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 31, 2006.

304-05-A

APPLICANT – Joseph Sherry, P.E. for Breezy Point Cooperative, owner Fred & Josephine Rella, lessee.

SUBJECT – Application October 13, 2005 - Enlargement of a one family dwelling which does not front on mapped street, which is contrary to Section 36, Article 3 of the General City Law. Located in an R4 Zoning District.

PREMISES AFFECTED – 38 Ocean Avenue E/S 294.86 N/O Rockaway Point Boulevard, Block 16350, part of Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 29, 2005, acting on Department of Buildings Application No. 402176015, reads:

- “A1- The Site and Building is not fronting on an official mapped street; therefore, no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; no permit can be issued since the proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291- of the Administrative Code of the City of New York.”; and

WHEREAS, a public hearing was held on this application on January 31, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated November 28, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens

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Borough Commissioner, September 29, 2005, acting on Department of Buildings Application No. 402176015, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received October 13, 2005" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 31, 2006.

305-05-A

APPLICANT – Joseph Sherry, P.E. for Breezy Point Cooperative, owner Jim McShane, lessee.

SUBJECT – Application October 13, 2005 - Enlargement of a one family dwelling which does not front on mapped street, which is contrary to Section 36, Article 3 of the General City Law and upgrade of a private disposal system in the bed of a service road contrary to Dept of Buildings policy. Located in an R4 Zoning District

PREMISES AFFECTED – 19 Queens Walk, E/S 416.39 N/O Breezy Point Boulevard. Block 16350 part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 29, 2005, acting on Department of Buildings Application No. 402176006, reads:

“A1– The Site and Building is not fronting on an official mapped street; therefore, no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; no permit can be issued since the proposed construction does not have at least 8% of total perimeter of building fronting directly upon a

legally mapped street or frontage space and therefore contrary to Section C27-291- of the Administrative Code of the City of New York.

A-2 – The private disposal system is in the bed of a service road which serves as a street which is contrary to Department of Buildings policy ; and

WHEREAS, a public hearing was held on this application on January 31, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated November 28, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, September 29, 2005, acting on Department of Buildings Application No .402176006, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received October 13, 2005"–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 31, 2006.

324-05-BZY

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Perry Street Development Corp., c/o Richard Born, Hotel Wellington, owners.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. 11-332 for 2-story residential addition to an existing 6-story commercial building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A (C1-5) and (C1-7).

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PREMISES AFFECTED – 164-172 Perry Street, midblock portion of block bounded by Perry, Washington and West Streets and Charles Lane, Block 637, Lots 13 and 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary R. Tarnoff.

ACTION OF THE BOARD - Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an application under Z.R. § 11-332, to renew a building permit and extend the time for the completion of a two-story enlargement to an existing six-story building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 348-05-A, decided the date hereof, which is an appeal to the Board for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in The City Record, with a continued hearing on January 10, 2006 and then to decision on January 31, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Council Member Quinn, Assembly Member Glick, Senator Duane and the Manhattan Borough President opposed the granting of any relief to the applicant; and

WHEREAS, certain other members of the community also opposed this application, including the Greenwich Village Society for Historic Preservation, (collectively, the “opposition”), alleging that some of the enlargement work was conducted contrary to the issued permit or in an unsafe manner; these allegations are addressed below; and

WHEREAS, the subject premises is an 8,377 sq. ft. midblock site consisting of two tax lots (Lots 13 and 17), on a block bounded by Perry, Washington and West Streets, and Charles Lane; and

WHEREAS, the premises is currently improved upon with a six-story garage building on Lot 13, and a three-story parking and garage building on Lot 17; the proposed two-story enlargement is of the six-story garage building, that

WHEREAS, the premises is currently located primarily within an R6A(C1-5) zoning district (with a small 3’-5” wide portion within a C1-7 zoning district), but was formerly located within a C6-2 zoning district; and

WHEREAS, the proposed enlargement complies with the former C6-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on October 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Far West Village Rezoning, which rezoned all but a sliver of the site

to R6A(C1-5), as noted above; and

WHEREAS, because the site is now within an R6A(C1-5) district, the existing building becomes a lawful non-complying structure, and the proposed enlargement increases the degree of non-compliance as to floor area, building height, and lot coverage and therefore is not permitted; and

WHEREAS, ZR §11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, ZR §11-31(c)(3) defines construction such as the proposed enlargement as “other construction”; and

WHEREAS, for “other construction”, an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, Z.R. §11-332 reads, in pertinent part: “[F]or other construction if construction has not been completed on the effective date of any applicable amendment, the building permit shall automatically lapse and the right to continue construction shall terminate. An application may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for . . . one term of not more than three months for other construction. In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, Z.R. § 11-31(a) reads: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant Department of Buildings (“DOB”) permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit was lawfully issued to the owner by DOB: on August 30, 2005, an alteration permit (Permit No. 104214814-01-AL; hereinafter, the “A1 Permit”) for the proposed enlargement; and

WHEREAS, additionally, other related permits were issued to facilitate construction of the proposed enlargement, including a fence permit, a sidewalk shed permit and a scaffold permit; and

WHEREAS, the Board has reviewed the record and agrees that the A1 Permit was lawfully issued to the owner of the subject premises on the referenced dates, prior to the Enactment Date; and

WHEREAS, although there was no dispute brought to the Board’s attention as to whether the A1 Permit issuance was based upon complete plans and specification, while the instant matter was in hearing, the Board was made aware that DOB was

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conducting an audit of the A1 Permit; and

WHEREAS, the Board is aware that after the audit, DOB issued a Notice of Objections as well as a 10 day letter indicating that the permit would be revoked unless the objections were resolved; and

WHEREAS, subsequent to this, the applicant submitted into the record the DOB Notice of Objections that indicates that all of the objections were resolved and that the audit was accepted; and

WHEREAS, in addition, the record contains a letter of rescission for the previously issued revocation from the Borough Commissioner of DOB; and

WHEREAS, in reliance upon DOB's review of the A1 Permit and the subsequent successful resolution of all objections, as well as confirmation of this from the Borough Commissioner, which is the only evidence before the Board as to the validity of the Permit, the Board concludes that the terms and general provisions of ZR § 11-31(a) are satisfied; and

WHEREAS, the Board makes this conclusion notwithstanding opposition's contentions as set forth in a letter dated January 27, 2006, which essentially recites some of the objections listed in the Notice of Objections and asks that the Board delay decision until said objection are resolved; and

WHEREAS, as discussed above, these objections have been resolved and the Borough Commissioner has rescinded the previously issued revocation letter; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth ZR 11-31(a) and that a decision may be rendered provided the other findings are met; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of an enlargement; and

WHEREAS, the Board first notes that the text of this provision requires the Board to evaluate the degree of completed work against what remains to be done; and

WHEREAS, thus, the Board's deliberation focuses upon the amount of work completed versus what remains in terms of actual construction; and

WHEREAS, useful gauges of the substantiality of the completed work are the time spent on construction up to the Enactment Date versus how much time the proposed enlargement will take to complete, as well as a discussion of the complexity of the work already done versus that which remains; and

WHEREAS, however, these gauges are not dispositive, and may be accorded different weight by the Board depending on the circumstances of a particular case; and

WHEREAS, the Board also observes that that the work to measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, the Board notes that like the actual work performed, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit expenditures, as submitted by the

applicant per the Board's request; and

WHEREAS, in its written statements and testimony, the applicant represents that as of the Enactment Date, substantial construction had been completed and substantial expenditures were made after the issuance of the A1 Permit; and

WHEREAS, the applicant states that work on the proposed enlargement subsequent to the issuance of the A1 Permit involved the following: (1) Selective demolition, consisting of the creation of two shafts by the demolition of portions of the first floor through the roof; (2) Cutting and excavation of the pit foundation for the new elevator; (3) Existing concrete encased steel moment connections were exposed in order to determine the necessary upgrades to the existing steel to bear the load of the new structure; (4) Masonry shaft construction, consisting of reinforced solid filled structural block constructed as a bearing member of the existing building; (5) Reinforcement of the structural columns from the fifth floor through the existing roof by encasing the columns and the connections in reinforced concrete; (6) The structural steel for the new 2-story addition was erected and fifty percent of the Q-decking (corrugated metal deck – 7th floor portion) was installed; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: various affidavits from the owner and contractor, a daily work log prepared by the contractor, and pictures of the work completed along with an affidavit from a construction supervisor and attached schedule that reflects in what month the pictures were taken; none of the pictures were taken after the Enactment Date; and

WHEREAS, at the request of the Board, the applicant also submitted plans stamped and signed by Asymptote Architecture, indicating the extent of completion of the proposed enlargement as of the Enactment Date; this set of plans corroborates the applicant's statements as to the scope of work; and

WHEREAS, the Board has reviewed this documentation and agrees that it establishes that the afore-mentioned work was completed prior to the Enactment Date; and

WHEREAS, the applicant states that this work was done over 29 days of construction; and

WHEREAS, during the course of construction, DOB inspectors were at the site on various occasions, and the following DOB violations were issued: (1) issuance of DOB Violation 091805CERMR01 on September 18, 2005, which states "construction activities are being performed on [sic – probably should read "beyond"] weekdays between the hours of 7am and 6pm without a variance as required by Section 24-224 of the Administrative Code" (hereinafter, the DOB Violation); and (2) issuance of ECB Violation 34490118L on September 22, 2005, which reads in pertinent part "Failure to safeguard public and property affected by construction operations noted: work in progress under job#104214814 exp 12-01-05 at roof levels adding 2 stories without providing sidewalk or protection" (hereinafter, the "ECB Violation"); and

WHEREAS, the ECB Violation was the result of an inspection on September 22, 2005, on which date work was stopped pursuant to a Stop Work Order ("SWO"); and

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WHEREAS, the applicant notes that the SWO was lifted on September 23, 2005 with respect to interior work and on October 12, 2005 with respect to exterior work; and

WHEREAS, no Stop Work Order was issued on September 18, 2005 when the DOB Violation was issued; and

WHEREAS, the applicant states that the following work remains to be done: “finish Q-decking (8th floor portion) and structural studs and place concrete at decks, finish bulkhead portion of masonry shaft, install exterior wall, roofing and window system on 7th and 8th floor, finish elevator, install scissor stairs, completion of mechanical, plumbing and electrical systems, finish lobby areas on cellar thru 8th floor, and finish loft apartments and related services on 7th and 8th floors”; and

WHEREAS, at the time of the initial application, the applicant stated that the remaining work would take approximately 50 to 60 days to finish; and

WHEREAS, however, in a submission dated December 8, 2006, the applicant noted that due an inordinate amount of rain in the fall of 2005, extensive damage to the proposed enlargement as well as to the existing building resulted, and that a longer amount of time to complete construction might therefore be required; and

WHEREAS, the applicant supported this contention with data from the National Climactic Data Center, which reflected the amount of rainfall, as well as an affidavit from the construction contractor which outlined the water damage; and

WHEREAS, based upon this concern, the applicant filed the afore-mentioned application for a common-law vested rights determination; and

WHEREAS, the Board notes that opposition questions whether the 50 to 60 day time estimate is accurate, but no proof of its inaccuracy has been provided by them; and

WHEREAS, so, for purposes of this application, the Board will rely upon the assertion of the applicant that, absent the intervening circumstance of rain damage that would not have occurred had the A1 Permit not lapsed by operation of law on the Enactment Date, completion of construction would take approximately 60 days; and

WHEREAS, thus, 29 out of 89 total days of anticipated construction (or 32 percent) took place prior to the Enactment Date, which the applicant represents supports a conclusion that substantial construction had been completed; and

WHEREAS, the applicant also states that, in these 29 days, the most complex work has already been completed; specifically, the applicant states that the reinforcement of the existing building structure, the excavation, demolition and dewatering for the new building shafts and the erection of the steel structure for the addition were the most challenging aspects of the proposed enlargement, from an engineering and site safety perspective; and

WHEREAS, the applicant states that the remaining work consists of installation of the remaining Q-decking, construction of the bulkhead, installation of the exterior wall, roof and windows and interior finish work; and

WHEREAS, the applicant concludes that based upon actual work performed under the A1 Permit, the amount of days worked versus those remaining, and the complexity, that

substantial construction has been completed sufficient to satisfy the standard in ZR § 11-332; and

WHEREAS, the Board agrees that the number of days that work proceeded, as well as its complexity, are useful as gauges, but further notes that the actual completion of physical construction is substantial in of itself, in that it resulted in numerous visible alterations to the existing building necessary to the proposed enlargement; and

WHEREAS, as to costs, the applicant initially stated that the expenditures made totaled \$1,603,056 of the total project cost of \$2,519,613 (51 percent); in support of this claim, the applicant has submitted checks, a receivables journal, and affidavits; and

WHEREAS, however, as noted above, the Board observes that ZR § 11-332 confines the expenditure analysis to those costs incurred after the permit and up to the date of the zoning amendment; and

WHEREAS, accordingly, the Board asked the applicant to clarify what costs were expended after the A1 Permit was issued; and

WHEREAS, in a submission dated December 27, 2005, the applicant states that a total of \$1,484,524, or approximately 47 percent of the total project cost, was incurred between the issuance of the A1 Permit and October 11, 2005, the date the A1 Permit lapsed; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR 11-332; and

WHEREAS, absent any other consideration, the Board would agree; and

WHEREAS, however, opposition to this case expressed concerns about three primary issues: (1) that, contrary to the assertions of the applicant, the developer should have been aware of the proposed rezoning since the plans for the area were known to the public; (2) that some of the performed construction and incurred expenditures that were folded into the applicant’s analysis were the result of illegal after-hours or weekend work; and (3) that some of the construction and expenditures in the analysis were the result of work performed while a safety measure was not complied with, as evidenced by the ECB Violation; and

WHEREAS, as to the first contention, leaving aside whether it is factually accurate, the Board finds that consideration of whether the develop knew of the impending rezoning is not particularly relevant or pertinent, where the Board’s consideration under ZR § 11-332 is technical in nature, and is based upon a review of construction work and expenditure; and

WHEREAS, additionally, the applicant represents that the inception of the development process began in the fall of 2004 when the owner was advised by the company that owned the garage on which the proposed enlargement is being constructed that it would be ceasing its operations; and

WHEREAS, the applicant further states that the developer retained the project architect in January 2005, purchased the floor area development rights from the adjacent parcel, Lot 17 in March 2005, and retained a construction manager in June, 2005 ; and

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WHEREAS, as to the second and third contentions, opposition claims that such work and expenditure should not be credited by the Board; and

WHEREAS, the Board took such claims seriously and asked the applicant to address the specific concerns; and

WHEREAS, in support of the second contention, opposition submitted affidavits from neighbors that state that they observed work conducted after legal permit hours (which are 9 to 5) and on the weekends (when a special permit from DOB would be needed); and

WHEREAS, in response to the second contention (concerning after hours work), the applicant provided the Board affidavits, and cited to the work log, in support of the contention that the only after-hours work performed is as follows: (1) steel was erected by crane on Saturday, September 17, 2005, and Sunday, September 18, 2005; this work was permitted under Department of Transportation ("DOT") Permit 02-2005258-143 (valid 9/17/05 through 9/25/05, indicating "may work Sat-Sun 9am – 6 pm") and DOB Permit 104214814 (valid 9/17/05, 9 am to 5 pm); (2) on Saturday, September 24, 2005, a sidewalk bridge was erected; this work was performed in order to correct the condition cited in the ECB Violation; (3) on Saturday, October 8, 2005, work consisting primarily of installing out rig safety nets, generally permitted under DOB Permits 104243506-01-EQ-SH, dated September 26, 2005, and 104251060-01-EQ-SF, dated October 5, 2005, was performed; there was also some interior work performed on this date that was related to site safety and site maintenance, specifically drilling of saddles, required for Fire Department access, on the stand pipe and general cleaning work; and (4) on Sunday, October 16, 2005, emergency work was performed to secure an out rig that had been dislodged by high winds; and

WHEREAS, as to the work performed on September 17 and 18, the applicant states that although the DOB permit was on its face limited to Saturday, September 17, 2005, the work had been permitted by DOT to also occur on Sunday, September 18, 2005; and

WHEREAS, the applicant also states that commencement of the work had been unexpectedly delayed on the morning of Saturday, September 17, 2005, such that only approximately 75 percent of the installation could take place on that day, and that work proceeded on Sunday September 18, 2005 because the DOT permit remained valid for one more day, because the crane was already in place and because of public safety concerns arising from the fact that not all of the steel had been braced; and

WHEREAS, according to the applicant, a DOB inspector visited the site on Sunday, September 18, 2005, was apprised of the delays and the safety concerns and elected not to issue a Stop Work Order, but did issue the DOB Violation; and

WHEREAS, the applicant also states that on Saturday, September 17, 2005, there was some additional interior work performed, which was generally related to site safety and site maintenance, specifically, blocking of the elevator shaft, dewatering of the elevator pit and installation of fall

protection at the stair shaft; and

WHEREAS, the applicant concludes that any weekend work was properly permitted and/or was necessitated by site safety concerns that did not relate to the scope of work of the A1 Permit; and

WHEREAS, as to the allegations of work after hours during the week, the applicant states that DOB did not issue any violations for after hours work despite its receipt of complaints; and

WHEREAS, the Board has reviewed the affidavits, the work log, and the referenced weekend work permits, and agrees that at least for September 17, 2005, work was allowed at the premises, up until 5 PM; and

WHEREAS, the Board also agrees that at least some of the weekend work conducted was in order to address safety concerns at the site; and

WHEREAS, however, opposition observes that the daily work log for Sunday September 18, 2005 indicates that the work involved setting steel on the roof with a crane and the erection of 8th floor beams; and

WHEREAS, the Board asked the applicant to respond to this; and

WHEREAS, in response, the applicant notes that this work was done so that unsecured steel would not be present on top of the building, which would pose a potential safety hazard; and

WHEREAS, the Board has reviewed the contentions of both parties as to the weekend work and the alleged after-hours work during the week; and

WHEREAS, the Board agrees that, as a general principle, work that was not done pursuant to the time limitations of a permit should not be counted towards vesting, absent extenuating circumstances; and

WHEREAS, the applicant argues that such extenuating circumstances exist here; and

WHEREAS, however, as discussed in more detail below, the applicant argues that since the aggregate cost of such work is not significant, the Board could find that even when this work is excluded, the threshold of substantial construction and expenditure is nevertheless met; and

WHEREAS, the applicant also notes that the weekend work done in response to safety concerns was not folded into the substantial work or expenditures calculations; and

WHEREAS, accordingly, exemption of this work would not affect the determination that the work and expenditures were substantial; and

WHEREAS, as to the third contention (concerning work done where a sidewalk shed was required), opposition states that in response to complaints, DOB issued the ECB Violation and related Stop Work Order for not having a sidewalk shed; and

WHEREAS, opposition contends that the exterior work on the proposed enlargement performed prior to September 23, 2005 was done in an unsafe manner because of the failure to provide a sidewalk shed and therefore should not be credited; and

WHEREAS, the applicant states that the Board should not discount work from the substantial construction and

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substantial expenditures standards because of a site safety violation for the lack of a sidewalk shed; and

WHEREAS, the applicant argues that while site safety is very important, and violation of said standards may result in penalties, the issuance of a violation does not invalidate work that was performed pursuant to validly issued DOB permits; and

WHEREAS, the Board agrees that issuance of a violation may not render a permit invalid nor does it necessarily mean that the work that was performed prior to issuance of a violation is unlawful; and

WHEREAS, additionally, like the applicant, the Board is unaware of any explicit authority that would allow it to discount work performed while the violation conditions remained from the substantial construction and substantial expenditures calculations; and

WHEREAS, nor has the opposition cited to any such authority; instead, the opposition states that the applicant disregarded safety concerns in order to continue with construction at an expedited pace and that the endangerment of the surrounding buildings and people should not be rewarded; and

WHEREAS, notwithstanding the apparent lack of precedent for excluding from a vesting calculation work performed in violation of an applicable safety requirement, the Board can envision that, depending on the circumstances, the possibility of discounting such work should at least be entertained, regardless of any official action as to the underlying permit; and

WHEREAS, for instance, if irrefutable proof was provided to the Board of a developer's willing and knowing disregard for a site safety provision such that danger to persons or property was imminent and obvious, and no other safety measures were taken and no mitigating circumstances existed, the Board, would at a minimum, consider excluding such work so that developers are not encouraged to forego

WHEREAS, however, as to this disputed work, the applicant makes the same argument as it did as to unpermitted work; specifically, that even if such work is excluded, the threshold of substantial construction and expenditure is nevertheless met; and

WHEREAS, specifically, the applicant notes that the expenditures for work that arguably required a sidewalk bridge or other pedestrian safety measures on Monday, September 19, 2005 through Thursday, September 22, 2005 consisted solely of the labor costs for the installation of steel materials that were already on the site, which are estimated by the developer to be approximately \$20,000; and

WHEREAS, the applicant states that this amount represents approximately 7 percent of the total amount under the iron work contract (\$293,500) and approximately 0.6 percent of the total project cost of \$3,126,814; and

WHEREAS, the applicant states, and the Board agrees that even if the non-permitted work and work conducted without the sidewalk shed is deducted safety measures in order to finish construction; and from the expenditures, a total of \$1,391,148 in costs, or 44 percent of the total project cost, was still incurred between the issuance of the A1 Permit

and the Enactment date; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that this percentage of expenditure is substantial and meets the finding set forth at Z.R. § 11-332; and

WHEREAS, additionally, the Board finds that the work performed up to September 18 was complex construction that was necessary for the proposed enlargement and that resulted in tangible change to the structure; and

WHEREAS, based upon its consideration of the arguments made by the applicant and opposition as outlined above, as well as its consideration of the entire record, the Board finds that substantial construction was completed and substantial expenditure were made; therefore, the Board finds that the applicant has adequately satisfied all the requirements of Z.R. § 11-332, and that the owner is entitled to the requested reinstatement of the A1 Permit, and all other permits necessary to complete the proposed enlargement; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application under BSA Cal. No. 348-05-A, stating that the relief that the Board can grant under ZR §11-332 is not sufficient to complete the proposed enlargement, due to the additional time it will take to both finish the anticipated work as well as remedy the unanticipated damage to the proposed enlargement that resulted from rain after work was stopped; and

WHEREAS, accordingly, although the Board, through this resolution, grants the owner of the site the requested three month extension for completion of construction that is allowed under ZR § 11-332, this grant is not an impediment to the reinstatement of the permit made by the Board under BSA Cal. No. 348-05-A, in which the Board is providing the applicant a sufficient amount of time to complete construction.

Therefore it is Resolved that this application made pursuant to Z.R. §11-332 to renew Alteration Permit No. 104214814 as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement for one term of three months from the date of this resolution, to expire on April 31, 2006; this grant and the term shall not prohibit the reinstatement of these permits pursuant to a grant made under BSA Cal. No. 348-05-A.

Adopted by the Board of Standards and Appeals, January 31, 2006.

348-05-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Perry Street Development Corp., c/o Richard Born, Hotel Wellington, owners.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. 11-332 for 2-story residential addition to an existing 6-story commercial building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A (C1-5) and (C1-7).

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PREMISES AFFECTED – 164-172 Perry Street, midblock portion of block bounded by Perry, Washington and West Streets and Charles Lane, Block 637, Lots 13 and 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary R. Tarnoff.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a two-story enlargement to an existing six-story building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 324-05-BZY, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-332 (hereinafter, the “BZY Application”); and

WHEREAS, the applicant made its initial request for relief under the common law in conjunction with the BZY Application; at the direction of the Board’s staff, the applicant submitted this separate application, because the analysis is different under the common law and because different relief may be granted, and also so that a separate calendar number could be issued; and

WHEREAS, the Board notes that while separate applications were ultimately filed, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2006 and then to decision on January 31, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Council Member Quinn, Assembly Member Glick, Senator Duane and the Manhattan Borough President opposed the granting of any relief to the applicant; and

WHEREAS, certain other members of the community also opposed this application, including the Greenwich Village Society for Historic Preservation, (collectively, the “opposition”), alleging that some of the enlargement work was conducted contrary to the issued permit or in an unsafe manner; these allegations are addressed below; and

WHEREAS, the subject premises is an 8,377 sq. ft. midblock site consisting of two tax lots (Lots 13 and 17), on a block bounded by Perry, Washington and West Streets, and Charles Lane; and

WHEREAS, the premises is currently improved upon with a six-story garage building on Lot 13, and a three-story parking and garage building on Lot 17; the proposed two-story enlargement is of the six-story garage building, that

WHEREAS, the premises is currently located primarily within an R6A(C1-5) zoning district, with a small 3’-5” wide portion within a C1-7 zoning district), but was formerly located within a C6-2 zoning district; and

WHEREAS, the proposed enlargement complies with the former C6-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on October 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Far West Village Rezoning, which rezoned all but a sliver of the site to R6A(C1-5), as noted above; and

WHEREAS, because the site is now within an R6A(C1-5) district, the proposed enlargement increases the degree of non-compliance as to floor area, building height, and lot coverage and therefore is not permitted; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed enlargement; and

WHEREAS, the applicant states that it is requesting relief under the common law and constitutional theory of vested rights in addition to seeking relief under ZR § 11-332 because the amount of relief that can be granted by the Board under this provision is limited to three months; and

WHEREAS, in a submission dated December 8, 2006, the applicant noted that due an inordinate amount of rain in the fall of 2005, extensive damage to the proposed enlargement as well as the existing building resulted, and that a longer amount of time to complete construction might therefore be required; and

WHEREAS, the applicant supported this contention with data from the National Climactic Data Center, which reflected the amount of rainfall, as well as an affidavit from the construction contractor which outlined the water damage; and

WHEREAS, based upon this concern, the applicant filed the instant application, and requests a six month term in which to complete construction; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to valid permits; and

WHEREAS, as reflected in the resolution for the BZY Application, the record for that case and the instant case contains sufficient evidence to make this finding; and

WHEREAS, turning to the substantive findings of the amount of work done and the amount of expenditure, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of an amendment; and

WHEREAS, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’ . Rather, it is a term which sums up a determination that the facts of the

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case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as to enlargements specifically, in its statement, the applicant cites to the case *Bayswater Health Related Facility v. Karagheuzoff*, 37 NY2d. 408, in which the Court of Appeals held that a vested right had been acquired for a conversion of existing structures to nursing homes because the “main building had already been gutted, its roof and sidewalks opened and exposed to the elements ...”; and

WHEREAS, the applicant also cites to *Paliotto v. Perlman*, 71 Misc.2d 221 (Sup. Ct. Nassau Co. 1972), where, when petitioner sought to complete a dome over a tennis court under a permit issued prior to the effective date of a new fire ordinance, the court held: “The completed approved improvements were an integral and necessary part of the proposed air supported structures alteration”; and

WHEREAS, the applicant states that from these cases, it is apparent that such factors as tangible physical change, gutting the existing building and exposing it to the elements, and completion of improvements that are an integral part of the alteration, all are relevant to a finding of completion of substantial construction; and

WHEREAS, the Board agrees that, under the common law, a completion of substantial construction finding will depend, in part, upon a showing of actual construction work resulting in some tangible change to the structure being altered that is integral to the proposed work; and

WHEREAS, in addition, the Board notes that, like a case brought under, Z.R. § 11-30 et seq., a comparison of the amount of work completed versus what remains, in terms of time and actual construction, and a discussion of the complexity of the work, may also be relevant but non-dispositive gauges; and

WHEREAS, however, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are included in the applicant’s analysis; and

WHEREAS, in its written statements and testimony, the applicant represents that as of the Enactment Date, substantial construction had been completed and substantial expenditures were made after the issuance of the A1 Permit; and

WHEREAS, the applicant states cites to the same work and the same evidence as was presented in the BZY Application; and

WHEREAS, the Board has reviewed this documentation and agrees that it establishes that the afore-mentioned work was completed prior to the Enactment Date; and

WHEREAS, the applicant also concludes that based upon actual work performed under the A1 Permit and its complexity, that substantial construction has been completed sufficient to satisfy the general standards under the common law; and

WHEREAS, as to costs, the applicant states that the expenditures made totaled \$1,864,488 of the total project cost of \$3,126,814 (59 percent); this total includes soft costs and irrevocable financial commitments; and

WHEREAS, in support of this claim, the applicant has submitted checks, a receivables journal, and affidavits, which the Board has reviewed and finds credible; and

WHEREAS, absent any other consideration, the Board would find that the degree of work done and expenditures incurred would be sufficient to meet the common law vesting standard; and

WHEREAS, however, opposition expressed concerns about three primary issues: (1) that the developer knew of the impending rezoning; (2) that some of the performed construction and incurred expenditures that were folded into the applicant’s analysis were the result of illegal after-hours or weekend work; and (3) that some of the construction and expenditures in the analysis were the result of work performed while a safety measure was not complied with, as evidence by the ECB Violation; and

WHEREAS, while the Board asked the applicant to respond to these concerns, for the reasons set forth in the resolution issued under BSA Cal. No. 324-05-BZY, the Board finds that none of these contentions negates a determination that the owner has obtained a vested right to continue construction of the proposed enlargement; and

WHEREAS, specifically, the applicant notes that the expenditures for work that arguably required a sidewalk bridge or other pedestrian safety measures on Monday, September 19, 2005 through Thursday, September 22, 2005 consisted solely of the labor costs for the installation of steel materials that were already on the site, which are estimated by the developer to be approximately \$20,000; and

WHEREAS, the applicant states that this amount represents approximately 7 percent of the total amount under the iron work contract (\$293,500) and approximately 0.6 percent of the total project cost of \$3,126,814; and

WHEREAS, the Board finds that a reduction of the total expenditure by this small of a percentage would not affect a determination that the total expenditure is substantial; and

WHEREAS, additionally, the Board finds that the work performed up to September 18 was complex construction that was necessary for the proposed enlargement and that resulted in tangible change to the structure; and

WHEREAS, accordingly, the owner has met the standard for vested rights under the common law is entitled to the requested six-month extension of the A1 Permit and all related permits for construction of the proposed enlargement.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights and requesting a reinstatement of Alteration Permit No. 104214814, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement for one term of six months from the date of this resolution, to expire on July 31, 2006.

Adopted by the Board of Standards and Appeals, January 31, 2006.

326-05-BZY

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APPLICANT – Greenberg Traurig, LLP by Deirdre Carson, for 163 Charles St. Realty, LLC., owner.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. §11-331 for the alteration and enlargement of the building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A and (C1-5).

PREMISES AFFECTED – 163 Charles Street, lot fronting on Charles Lane between West and Washington Streets, Block 637, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION -

WHEREAS, this is an application under ZR §11-331, to renew a building permit and extend the time for the completion of a two-story enlargement to an existing six-story building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 328-05-A, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2006 and then to decision on January 31, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Council Member Quinn, Assembly Member Glick, Senator Duane, and the Manhattan Borough President opposed the granting of any relief to the applicant; and

WHEREAS, certain other members of the community also opposed this application, including the Greenwich Village Society for Historic Preservation, (collectively, the “opposition”), alleging that some of the enlargement work was conducted contrary to the issued permit or in an unsafe manner and that the representations of the applicant were not supported by evidence; these allegations are addressed below; and

WHEREAS, the applicant states that the subject premises is a through lot fronting on Charles Street and Charles Lane between Washington and West Streets in the West Village in Manhattan and is situated on a lot having 2,244 square feet of lot area, with frontage of 22 feet on each street and a depth of 102 feet; and

WHEREAS, the applicant proposes to enlarge and alter the building that existed at the site, which will result in a building containing 2,731 square feet of commercial floor

area (1.2 FAR) and 9594 square feet of residential floor area (4.2 FAR), with three dwelling units and 7 stories with a penthouse; and

WHEREAS, the subject premises is currently located within an R6A(C1-5) zoning district, but was formerly located within a C6-2 zoning district; and

WHEREAS, the proposed enlargement complies with the former C6-2 zoning district parameters as to floor area, stories of commercial, height, lot coverage and street wall; and

WHEREAS, however, on October 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Far West Village Rezoning, which rezoned the site to R6A(C1-5), as noted above; and

WHEREAS, because the site is now within an R6A(C1-5) district, the proposed development would not comply with such parameters; and

WHEREAS, ZR § 11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, ZR § 11-31(c)(1)(iv) defines the proposed enlargement as a “major enlargement” since the enlargement requires the installation of foundations and involves at least 50 percent of the total floor area of the enlarged building; and

WHEREAS, pursuant to ZR § 11-31(c)(1), a “major enlargement” is considered a “minor development” for purposes of ZR § 11-331; and

WHEREAS, Z.R. §11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, Z.R. §11-31(a) reads: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment

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to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant Department of Buildings ("DOB") permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit was lawfully issued to the owner by DOB: on November 24, 2004, an alteration permit (Permit No. 103972550; hereinafter, the "A1 Permit") for the proposed enlargement, as well as an extension of this permit through August of 2006; and

WHEREAS, related permits for other work types to the A1 Permit, including those for general construction, plumbing, structural, boiler and standpipe, were also issued; and

WHEREAS, additionally, DOB and the Department of Transportation issued various weekend work permits, all of which are part of the record; and

WHEREAS, the Board has reviewed the record and agrees that the A1 Permit was lawfully issued to the owner of the subject premises on the referenced date, which is prior to the Enactment Date; and

WHEREAS, although there was no dispute brought to the Board's attention as to whether the A1 Permit issuance was based upon complete plans and specification, while the instant matter was in hearing, the Board was made aware that DOB was conducting an audit of the A1 Permit; and

WHEREAS, the Board is aware that after the audit, DOB issued a Notice of Objections as well as a 10 day letter indicating that the permit would be revoked unless the objections were resolved; and

WHEREAS, subsequent to this, the applicant submitted into the record the DOB Notice of Objections that indicates that all of the objections were resolved and that the audit was accepted; and

WHEREAS, in addition, the record contains a letter of rescission for the previously issued revocation from the Borough Commissioner of DOB; and

WHEREAS, in reliance upon DOB's review of the A1 Permit and the subsequent successful resolution of all objections, as well as confirmation of this from the Borough Commissioner, which is the only evidence before the Board as to the validity of the Permit, the Board concludes that the terms and general provisions of ZR §11-31(a) are satisfied; and

WHEREAS, the Board makes this conclusion notwithstanding opposition's contentions as set forth in a letter dated January 27, 2006, which essentially recites some of the objections listed in the Notice of Objections and asks that the Board delay decision until said objections are resolved; and

WHEREAS, as discussed above, these objections have been resolved and the Borough Commissioner has rescinded the previously issued revocation letter; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth ZR 11-31(a) and a decision may be rendered provided the other findings are met; and

WHEREAS, turning to the substantive findings of ZR §11-331, the applicant represents that, as of the Enactment Date,

excavation was completed and substantial progress had been made on the required foundation; and

WHEREAS, the applicant states that in December 2004, the developer demolished the above-ground floors of the building existing on the site, leaving the foundation walls, some exterior walls at grade and some existing underpinning intact for use in the new foundation; and

WHEREAS, the applicant further states that excavation began in May 2005 and was completed September 15, 2005, though some excess fill for use in leveling the foundation and for access to the site was left; and

WHEREAS, the applicant represents that upon completion of the excavation, the developer installed a dewatering system, seven of the twelve required footings, 95% of the underpinning and a large mat footing covering approximately one third of the foundation, as well as an elevator pit; and

WHEREAS, work continued on the site until the Enactment Date, aside from a period of time where work was stopped by DOB pursuant to a Stop Work Order issued in conjunction with ECB Viol Number: 34484011K (the "ECB Violation"); this violation cites a failure to protect adjoining property during excavation (the relevancy of this violation is discussed below); and

WHEREAS, this Stop Work Order was later lifted and work was allowed to continue; and

WHEREAS, the applicant represents that no other violations or Stop Work Orders were issued prior to the Enactment Date; and

WHEREAS, in order to complete the foundation, the applicant states that the developer must construct the remaining five footings and 5.0% of the underpinning as well as pour the floor slab; and

WHEREAS, in terms of time remaining on foundation construction, the applicant believes that the balance of the foundation work required on the site can be completed in 7 working days; and

WHEREAS, in support of the contention that concrete for the footings and other foundation components was poured, the applicant has submitted pour slips from the concrete contractor and well as affidavits; and

WHEREAS, at the first hearing, the Board requested more information as to the extent of the completed foundation work; and

WHEREAS, in response, the applicant submitted elevations showing the completed work, which illustrates the following: (1) Existing walls on all four perimeters extending from the base of the foundation to grade; (2) New underpinning on portions of the western perimeter wall, on the entire eastern foundation wall and the entire northern foundation wall, all of which extends from the base of the foundation to heights between 8 feet and 14 feet; (3) Footings extending from the base of the foundation up to 8 feet; (4) A mat slab that is 3 feet 6 inches thick covering approximately one-third of the foundation floor; and

WHEREAS, the applicant states that the only portions of the proposed building that would transfer load to the soil

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are the underpinning (122 out of 129 cubic yards poured), footings (57 out of 73 cubic yards poured), the mat slab (108 out of 108 cubic yards poured) and foundation walls; and

WHEREAS, the applicant notes that although new walls have not been poured, existing walls are located on all four perimeters of the foundation and are incorporated into the foundation; and

WHEREAS, the applicant concludes that the level of completion of the slab, footings and walls at the point of contact with the soil sufficiently illustrate the extent of foundation completion; and

WHEREAS, the applicant also submitted letters from subcontractors confirming the storage of five trailer loads of manufactured steel for the building since October 5, 2005, as well as the completion of the stairs for the building; and

WHEREAS, further, the applicant submitted an affidavit by the project architect, Daniel Goldner, confirming the extent of completion of the foundation as indicated on the submitted plans; and

WHEREAS, the Board has reviewed all of the applicant's representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, opposition to this case initially expressed concerns about three primary issues: (1) that some of the performed construction and incurred expenditures that were folded into the applicant's analysis were the result of illegal after-hours or weekend work; (2) that some of the performed construction was the result of unsafe work; (3) that the evidence submitted as to the progress made on foundations is not convincing; and

WHEREAS, in response, the applicant cited to the fact that the developer had obtained permits for Saturday work on every Saturday between July 2, 2005 and October 8, 2005, except for September 30, 2005; and

WHEREAS, as to allegations of other after hours work, the applicant stated that such work may have been related to dewatering, which involves constant pumping of water from the site, which must be regularly supervised and which is legal; and

WHEREAS, the applicant notes, and the Board agrees, that the affidavits and testimony submitted by opposition alleging illegal work are vague and conclusory; and

WHEREAS, as to the possibility of unsafe work, opposition alleges that as indicated by the ECB Violation, the work on the foundation caused damage to an adjacent building, which is evidence that the work was done quickly and unsafely; and

WHEREAS, opposition contends that, on this basis, the Board should discount all of the foundation work; and

WHEREAS, the applicant states that although the work on the site was briefly stopped when cracking occurred on an adjacent property, that condition was addressed by the developer and the developer will undertake whatever ameliorative action is required; and

WHEREAS, the Board observes that such an occurrence, as apparently happened here, does not mean that

the foundation work as a whole must be discounted for purposes of ZR § 11-331; and

WHEREAS, finally, as to the evidentiary issue, opposition claims that visual observation of the site does not reveal the extent of foundation completion as represented by the applicant; and

WHEREAS, the applicant responds that the neighbors who allege that the photos submitted by the applicant may not reflect current conditions or work which was begun and then removed are not aware that much of the construction done on the foundation underpinning is now covered by backfilled dirt and therefore would not be visible in their photographs or observations; and

WHEREAS, at the next hearing, opposition continued to allege that the foundation work was done in a negligent and hasty manner, as evidenced by the damage to adjacent property, and therefore should not be credited; and

WHEREAS, opposition also continued to allege that work was done illegally after hours; and

WHEREAS, however, opposition did not specifically address any of the applicant's responses to such allegations, as discussed above, nor did they provide any new evidence in support of the allegations; and

WHEREAS, finally, opposition submitted into the record an engineer's report, which alleges the following: (1) that the foundation wall and underpinning on the western side of the premises, which the applicant represents as completed foundation work, were actually completed before the current owner purchased the building; (2) that the owner will need more than seven days to finish the foundation; (3) that the time estimate should include an assessment of waterproofing needs, which was not considered; and (4) that some of the footings may not actually be completed; and

WHEREAS, opposition indicated that this engineer's report was based on observations made from a neighboring building; and

WHEREAS, in a submission dated January 23, 2006, the applicant responded to each of the contentions; and

WHEREAS, as to the waterproofing issue, the applicant notes that the planned waterproofing is not yet apparent because it will be one of the last elements of the foundation to be installed; as part of the waterproofing plan, the contractor will install a waterproof membrane between the soil and the floor slab just before the slab is poured; and

WHEREAS, the applicant notes that a network of sub-slab drainage is being installed, and, as shown in the foundation plans, a sump pump and ejector pit have been installed to provide drainage; and

WHEREAS, the applicant observes that this is a very standard waterproofing plan for this type of building, and opposition did not refute this; and

WHEREAS, as to the time to complete construction, the applicant states that the developer's 7-day time estimate was an estimate that was intended to be as accurate as possible; and

WHEREAS, the Board observes that opposition was not specific as to how long foundation completion would

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actually take; and

WHEREAS, the Board notes that even if actual completion takes longer, such that that the ratio of days of construction up to the Enactment Date to day of remaining construction is affected, the degree of foundation work completed in terms of concrete poured and percentage of total foundation elements completed is so significant in the instant case that a determination that the substantial progress was made on foundations would not be affected; and

WHEREAS, the Board notes that the ratio is a gauge only, and is not dispositive to the Board's deliberations, especially where it is clear that significant work has been performed; and

WHEREAS, as to completion of the south wall underpinning, the applicant notes that it never claimed that the underpinning of the south wall was complete; instead, the applicant observes that the foundation plan contains green shading on the south wall to indicate that the underpinning there is not complete; and

WHEREAS, as to completion of footings, the Board notes that because portions of the site have been backfilled, certain of the completed footings are not visible; and

WHEREAS, also, as to certain other footings where reinforcing can be seen projecting from them, the applicant notes that the footings are complete; the small amount of rebar extending above the footings is embedded in four feet of concrete and will tie the footing to the slab once it is poured; and

WHEREAS, the applicant explained that the visibility of these elements simply means that these footings are complete and ready to support additional components of the Building; and

WHEREAS, the Board has considered the applicant's responses to the contentions of opposition and finds that they are logical, credible, and based on substantial evidence; and

WHEREAS, based upon its consideration of the arguments made by the applicant and opposition as outlined above, as well as its consideration of the entire record, the Board finds that excavation was complete and that substantial progress had been made on foundations; therefore, the Board finds that the applicant has adequately satisfied all the requirements of Z.R. § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application under BSA Cal. No. 328-05-A, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the A1 Permit; and

WHEREAS, accordingly, although the Board, through this resolution, grants the owner of the site the six month extension for completion of construction that is allowed under ZR § 11-331, this grant is not an impediment to the reinstatement of the permit made by the Board under BSA Cal.

No. 328-05-A, should the applicant so choose.

Therefore it is Resolved that this application made pursuant to ZR § 11-331, to renew Alteration Permit No. 103972550 as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement for one term of six months from the date of this resolution, to expire on July 31, 2006; this grant and the term shall not prohibit the reinstatement of these permits pursuant to a grant made under BSA Cal. No. 328-05-A.

Adopted by the Board of Standards and Appeals, January 31, 2006.

328-05-A

APPLICANT – Greenberg Traurig, LLP by Deirdre Carson, for 163 Charles St. Realty, LLC., owner.

SUBJECT – Application November 10, 2005 – Proposed extension of time to complete construction pursuant to Z.R. § 11-331 for the alteration and enlargement of the building. Appeal case is seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior C6-2 zoning district. Current Zoning District is R6A and (C1-5).

PREMISES AFFECTED – 163 Charles Street, lot fronting on Charles Lane between West and Washington Streets, Block 637, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Abstain: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed enlargement of a building at the referenced premises; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 326-05-BZY (the "BZY Application"), decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2006 and

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then to decision on January 31, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Council Member Quinn, Assembly Member Glick, Senator Duane, and the Manhattan Borough President opposed the granting of any relief to the applicant; and

WHEREAS, certain other members of the community also opposed this application, including the Greenwich Village Society for Historic Preservation, (collectively, the "opposition"), alleging that some of the enlargement work was conducted contrary to the issued permit or in an unsafe manner and that the representations of the applicant were not supported by evidence; these allegations are addressed below; and

WHEREAS, the applicant states that the subject premises is a through lot fronting on Charles Street and Charles Lane between Washington and West Streets in the West Village in Manhattan and is situated on a lot having 2,244 square feet of lot area, with frontage of 22 feet on each street and a depth of 102 feet; and

WHEREAS, the applicant proposes to enlarge and alter the building that existed at the site, which will result in a building containing 2,731 square feet of commercial floor area (1.2 FAR) and 9594 square feet of residential floor area (4.2 FAR), with three dwelling units and 7 stories with a penthouse; and

WHEREAS, the subject premises is currently located within an R6A(C1-5) zoning district, but was formerly located within a C6-2 zoning district; and

WHEREAS, the proposed enlargement complies with the former C6-2 zoning district parameters as to floor area, stories of commercial, height, lot coverage and street wall; and

WHEREAS, however, on October 11, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Far West Village Rezoning, which rezoned the site to R6A(C1-5), as noted above; and

WHEREAS, because the site is now within an R6A(C1-5) district, the proposed development would not comply with such parameters; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed enlargement; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, as reflected in the resolution for the BZY Application, the record for that case and the instant case contains sufficient evidence to make this finding; and

WHEREAS, specifically, the applicant states that on November 24, 2004, an alteration permit (Permit No. 103972550; hereinafter, the "A1 Permit") for the proposed enlargement, was issued by the Department of Buildings; DOB also issued an extension of this permit through August of 2006;

and

WHEREAS, turning to the substantive findings of the amount of work done and the amount of expenditure, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of an amendment; and

WHEREAS, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, the applicant cites to *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are included in the applicant's analysis; and

WHEREAS, in its written statements and testimony, the applicant represents that as of the Enactment Date, substantial construction had been completed and substantial expenditures were made after the issuance of the A1 Permit; and

WHEREAS, more specifically, the applicant represents that: (1) the owner of the site will suffer serious economic harm without the right to build under the A1 Permit, as several floors of the proposed building would not be permitted and the owner would have to create new building plans and build a new foundation; (2) substantial construction had occurred by the Enactment Date because: (i) all portions of the existing building not intended to be incorporated into the enlarged and altered building had been removed, (ii) excavation was complete and (iii) approximately 87% of the concrete for the foundation had been poured; and (3) substantial expenditures had been made by the time of the Rezoning because significant sums had been either expended or committed through irrevocable contracts; and WHEREAS, the applicant cites to the same work and the same evidence as was presented in the BZY Application; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that the significant progress was made on foundations prior to the Enactment Date, and that said work was substantial; and

WHEREAS, as to costs, the applicant states that 72% of the budgeted expenditures for the proposed enlargement had been either expended or committed pursuant to irrevocable contracts by the Enactment Date; and

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WHEREAS, the Board notes that the budgeted expenditures included site purchase costs, which for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost and these particular site purchase costs, the Board concludes that the actual construction costs for the proposed enlargement, both soft and hard, approximate 7.4 million dollars; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$110,750 for demolition, \$79,643 in construction manager's fees, \$300,000 to the foundation contractor, and \$81,428 for additional foundation expenses; and

WHEREAS, additionally, the owner had also paid \$13,590 as a down payment for the elevator and commissioned the manufacture of \$449,000 of structural steel, which had been manufactured and now awaits installation; and

WHEREAS, other costs included \$186,134 for the architect and \$120,642 other consultants and engineers; and

WHEREAS, the applicant further states that the owner also irrevocably owed an additional \$1,721,687 in connection with the proposed enlargement, because it had executed binding contracts for work and materials, including \$150,357 in outstanding fees to the construction manager, \$387,500 for the construction of the curtain wall and windows, and an additional \$195,218 for the foundation; and

WHEREAS, in addition, the owner was under contract for an additional \$140,410 for the elevator, \$501,000 for the remaining structural steel, \$86,436 for the facade brick, which had already been manufactured, and \$51,366 in additional fees to the architect; and

WHEREAS, at the request of the Board, the applicant also provided further detail about the manufactured and purchased steel used in the project, noting that before October 5, 2005, the iron contractor had manufactured 50% of the steel required for the building, for which the developer owed \$472,222 to the contractor; and

WHEREAS, the applicant provided proof of payment for this steel; and

WHEREAS, the total of these construction related costs and commitments is approximately 4.5 million dollars, which means that approximately 60 percent of the construction related project costs has been expended or committed; and

WHEREAS, additionally, as noted by the applicant, a new foundation would have to be installed for such a complying building, further compounding the economic harm to the owner; and

WHEREAS, finally, as further evidence of the economic harm that the owner would incur if required to construct the building under the current zoning, the applicant notes that the owner has taken out a \$7,000,000 mortgage on the site for use in constructing the building, and that, to date, the owner has drawn down \$4,989,155 of that amount to finance part of its acquisition and construction costs, which is irrevocably owed to the bank; and

WHEREAS, based upon its review of the expenditures

and commitments made by the owner and the evidence submitted in support of them, the Board agrees that such costs are substantial; and

WHEREAS, absent any other consideration, the Board would find that the degree of work done and expenditures incurred would be sufficient to meet the common law vesting standard; and

WHEREAS, however, as discussed in the resolution issued under BSA Cal. No. 324-05-BZY, opposition expressed concerns about various aspects of this application; and

WHEREAS, the Board asked the applicant to respond to these concerns, and for the reasons set forth in the resolution for BSA Cal. No. 326-05-BZY, the Board finds that none of these contentions negates a determination that the owner has obtained a vested right to continue construction of the proposed enlargement; and

WHEREAS, based upon its consideration of the arguments made by the applicant and opposition as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested six-month extension of the A1 Permit, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Alteration Permit No. 103972550, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement for one term of six months from the date of this resolution, to expire on July 31, 2006.

Adopted by the Board of Standards and Appeals, January 31, 2006.

144-05-BZY

APPLICANT – Alfonso Duarte, for Bel Homes, LLC, owner.

SUBJECT – Application June 9, 2005 - Proposed extension of time to complete construction pursuant to Z.R. 11-331 for two-two family attached dwellings.

PREMISES AFFECTED – 143-53/55 Poplar Avenue, northwest corner of Parsons Boulevard, and Poplar Avenue, Block 5228, Lots 32 and 34, Flushing, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Alfonso Duarte.

For Opposition: Beverly McDermott, Edmond Toadu and Joe Amoroso.

ACTION OF THE BOARD - Laid over to March 7, 2006, at 10 A.M., for continued hearing.

190-05-A

APPLICANT – Stadtmauer Bailkin, LLP, for John Antzoulis, owner.

SUBJECT – Application filed on August 12, 2005 – An

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appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R2 zoning district. Current Zoning District is R2A.

PREMISES AFFECTED - 28-32 215th Street, east side of 215th Street, between 28th Avenue and 29th Avenue, Block 6016, Lot 56, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Richard Bowers and Neil Weisband.

For Administrative: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 10 A.M., for continued hearing.

Pasquale Pacifico, Executive Director.

Adjourned: 12:00 P.M.

REGULAR MEETING TUESDAY AFTERNOON, JANUARY 31, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

286-04-BZ & 287-04-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.

SUBJECT – Application August 18, 2004 – under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED –

85-78 Santiago Street, west side, 11.74’ south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#13), Borough of Queens.

85-82 Santiago Street, west side, 177’ south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#15), Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Linda Valentino, Chun Kung Tang and Huei Chun Shing.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for continued hearing.

382-04-BZ

APPLICANT – Eric Palatnik, P.C., for Billy Ades, (Contract Vendee).

SUBJECT – Application December 6, 2004 – under Z.R.

§73-622 – to permit the proposed enlargement of an existing single family dwelling, located in an R4 zoning district, which does not comply with the zoning requirements for floor area, lot coverage, open space and side yards, is contrary to Z.R. §23-141(b) and §23-461(a).

PREMISES AFFECTED – 2026 Avenue “T”, corner of Avenue “T” and East 21st Street, Block 7325, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Dill Ades.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for decision, hearing closed.

26-05-BZ

APPLICANT – Cozen O’Connor, for Tikvah Realty, LLC, owner.

SUBJECT – Application February 11, 2005 - under Z.R. §72-21 to permit the proposed bulk variance, to facilitate the new construction of an 89 room hotel on floors 4-6, catering facility on floors 1-3, ground floor retail and three levels of underground parking, which creates non-compliance with regards to floor area, rear yard, interior lot, permitted obstructions in the rear yard, setback, sky exposure plane, loading berths and accessory off-street parking spaces, is contrary to Z.R. §33-122, §33-26, §33-432, §36-21, §33-23 and §36-62.

PREMISES AFFECTED - 1702/28 East 9th Street, a/k/a 815 Kings Highway, west side, between Kings Highway and Quentin Road, Block 6665, Lots 7, 12 and 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Laid over to February 28, 2006, at 1:30 P.M., for adjourned hearing.

47-05-BZ

APPLICANT – Fischbein Badillo Wagner Harding, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 - under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED - 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

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For Applicant: Peter Geis.

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for adjourned hearing.

72-05-BZ

APPLICANT – Harold Weinberg, P.E., for Cong. Shomlou by Rabbi Marton Ehrenreich, owner.

SUBJECT – Application March 23, 2005 - under Z.R. §72-21 to permit the proposed erection of a synagogue and yeshiva, with accessory residences, Use Groups 2 and 4, located in an R6 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, rear yard and open space ratio, is contrary to Z.R. §§24-11, 23-142, 24-36 and 24-12.

PREMISES AFFECTED - 245 Hooper Street, north side, 205° east of Marcy Avenue, between Marcy and Harrison Avenues, Block 2201, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 1:30 P.M., for continued hearing.

150-05-BZ

APPLICANT – Henry & Dooley Architects, P.C., for Doris Porter, owner; Cynthia Small, lessee.

SUBJECT – Application June 16, 2005 – under Z.R. §73-36 approval sought for a proposed physical cultural establishment located on the second and third floor in a mixed- use building. The PCE use will contain 2, 006 square feet. The site is located in a C2-3 /R-6 Zoning District.

PREMISES AFFECTED – 1426 Fulton Street, between Kingston and Brooklyn Avenue, Block 1863, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Paul Duke.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for decision, hearing closed.

171-05-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP for Equinox 568 Broadway Inc., lessee, 568 Broadway Properties LLC, owner.

SUBJECT – Application July 28, 2005 – Special Permit:

Under ZR Section 73-36 an approval sought to permit the operation of a physical cultural establishment located on a portion of the cellar, portion of the first floor, part of the mezzanine, entire second floor, and a portion of the third floor of a twelve story commercial building . The PCE use will contain 26, 712 square feet of floor area. The site is located in a M1-5B Zoning District (SOHO Cast Iron).

PREMISES AFFECTED – 568 Broadway aka 69-79 Prince Street and 108-112 Crosby Streets, Block 512, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 7, 2006, at 1:30 P.M., for decision, hearing closed.

172-05-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP for Equinox Joralemon Street, Inc., lessee, 50 Court Street Associates, owner.

SUBJECT – Application July 28, 2005 – Special Permit: Under ZR Section 73-36 an approval sought to permit the operation of a physical cultural establishment located on a portion of the ground floor, part of the mezzanine, entire second, third and fourth floors of a twelve story commercial building. The PCE use will contain 31, 538 square feet of floor area. The site is located in a C5-2 A Zoning District(DB).

PREMISES AFFECTED – 50 Court Street aka 194-204 Joralemon Street, southwest corner of Court Street and Joralemon Street, Block 265, Lot # 43, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 7, 2006, at 1:30 P.M., for decision, hearing closed.

195-05-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Steven Wemreb and Raizy Weinreb, owner.

SUBJECT – Application August 17, 2005 - Pursuant to ZR §73-622 for the enlargement of an existing one family residence which creates non compliances with respect to floor area, lot coverage and open space as per ZR 23-141 and less than the minimum required side yard as per ZR 23-48. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 2906 Quentin Road, Quentin

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Road between East 29th Street and Nostrand Avenue, Block 6812, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 14, 2006, at 1:30 P.M., for decision, hearing closed.

196-05-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Leon Kamkhatchi and Pnina Fani Kamkhatchi, owner.

SUBJECT – Application August 17, 2005 - ZR§73-622 for the enlargement of an existing one family residence which creates non compliances with respect to floor area, lot coverage and open space as per ZR §23-141 and less than the minimum required side yard as per ZR 23-48. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 2315 Quentin Road, Quentin Road between East 23rd Street and East 24th Street, Block 6786, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 14, 2006, at 1:30 P.M., for decision, hearing closed.

Pasquale Pacifico, Executive Director.

Adjourned: 3:50 P.M.

BULLETIN

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February 16, 2006

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Tuesday, February 7 2006**

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300-05-A	995 Bayside, Queens
316-05-A	3 West Market Street, Queens
335-05-A	3 Kildare Walk, Queens
162-05-A	19-21 Beekman Place, Manhattan
189-05-A	240 Riverside Boulevard, Manhattan

Afternoon Calendar 106

Affecting Calendar Numbers:

164-04-BZ	2241 Westchester Avenue, The Bronx
280-04-BZ	34-28 214 th Place, Queens
281-04-A	34-28 214 th Place, Queens
282-04-BZ	34-28 214 th Place, Queens
283-04-A	34-28 214 th Place, Queens

DOCKETS

New Case Filed Up to February 7, 2006

20-06-A

38 Kildare Walk, W/S Kildare Walk, Breezy Point Boulevard, Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3-Proposed reconstruction and enlargement of single family dwelling not fronting a mapped street, upgrade existing non-conforming private disposal system in the bed of the service road contrary to Building Dept. policy

21-06-A

28 Rockaway Point Boulevard, N/S 85.09' East of Beach 179th Street, Block 16340, Lot p/o 50, Borough of **Queens, Community Board: 14**. General City Law Section 35, Article 3-Propose to construct a second story on a home which lies within the bed of a mapped street (Rockaway Point Boulevard A/K/A State Road).

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

APRIL 4, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 4, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

540-53-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Marbridge Realty Co., Inc., owner.

SUBJECT – Application October 25, 2005 – Extension of Term/Waiver for an existing parking lot accessory to a commercial building. The premise is located in a C2-4 & R3-1 zoning district.

PREMISES AFFECTED – 87-17 111th Street, Block 9301, Lots 124, 125, Borough of Queens.

COMMUNITY BOARD #9Q

295-77-BZ

APPLICANT – Walter T. Gorman, P.E., for Alfred M. Lama, Barnik Associates, LLC, owner.

SUBJECT – Application September 27, 2005 – Extension of Term/Waiver of a variance Z.R. §72-21 for the continued use of a gasoline service station which expired on October 1, 2003 for an additional ten (10) years; and an amendment to legalize the conversion of a portion of the service building from office/sales and attendant's area to an accessory convenience store, the erection of a trash enclosure, air pump tower and car vacuum, a public telephone and wooden planter boxes. The premise is located in an C1-2 in R4 zoning district.

PREMISES AFFECTED – 87-10 Northern Boulevard, southside blockfront between 87th & 88th Streets, Block 1435, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

545-78-BZ

APPLICANT – Petraro & Jones, LLP, for Cotaldo Vasapolli, owner.

SUBJECT – Application January 15, 2004 – Reopening for an extension of the term of a variance for a commercial vehicle storage establishment in an R4 zoning district. The term expired on March 27, 2002. The application also seeks a waiver of the Board's rules of practice and procedure for an extension of term application filed more than one year, but less than two years, following expiration of the term. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 901/903 Pine Street, West side of Pine Street, 250 feet north of the intersection of Pine Street and Cozine Avenue, Brooklyn

COMMUNITY BOARD #5BK

APPEALS CALENDAR

364-05-A & 365-05-A

APPLICANT - Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.

SUBJECT - Application filed on December 19, 2005 - An appeal seeking a determination that that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 87-30 & 87-32 167th Street, 252' north of the corner formed by the intersection of Hillside Avenue and 167th Street, Block 9838, Lots 114 & 116, Borough of Queens.

COMMUNITY BOARD #8Q

APRIL 4, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing,

CALENDAR

Tuesday afternoon, April 4, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

274-04-BZ

APPLICANT – Harold Weinberg, P.E., for Dr. Elena Starosta, owner.

SUBJECT – Application August 6, 2004 - Under Z.R.§72-21 Variance under Section 72-21, in an R4 district and on a lot consists of 2,470 SF, permission sought to legalize the extension of a medical use to the second floor on an existing building consisting of two-stories. The use is contrary to side yard requirements

PREMISES AFFECTED – 2114 Gravesend Neck Road, south side, 63'-7½" south of East 22nd Street, Block 7381, Lot 101, Borough of Brooklyn.

COMMUNITY BOARD #15BK

340-05-BZ

APPLICANT – The Law office of Fredrick A. Becker, for Chelsea Eighth L.P., owner; TSI West 16th Street dba New York Sports Club, lessee.

SUBJECT – Application filed November 29, 2005 - Variance under Z.R.§72-21. In C1-6A, C6-2A, R8B districts, permission sought to legalize a physical culture establishment (PCE), located in the portions of the cellar and first floor of an existing 22-story mixed-use building. The proposed use is contrary to district use regulations.

PREMISES AFFECTED – 270 West 17th Street, aka 124-128 Eighth Avenue, easterly sided of Eighth Avenue between 17th Street and West 16th Streets, Block 766, Lots 1101, 1102, Borough of Manhattan.

COMMUNITY BOARD #4M

community facility use on the 1st and 2nd floors in an R7A Zoning District; contrary to ZR 23-145.

PREMISES – 325 East 101st Street, between First and Second Avenues, Block 1673, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #11M

Jeff Mulligan, Executive Director

349-05-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Church of the Resurrection, owner.

SUBJECT - Zoning Variance (bulk) pursuant to ZR 72-21 to allow a proposed eight (8) story residential building with

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REGULAR MEETING TUESDAY MORNING, FEBRUARY 7, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Chin.

Absent: Commissioner Collins.

The motion is to approve the minutes of regular meeting of the Board held on Tuesday morning and afternoon, November 22, 2005, as printed in the bulletin of December 1, 2005, Vol. 90, No. 49. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

262-99-BZ

APPLICANT – Sheldon Lobel, P.C., for A.R.E. Group Inc., owner.

SUBJECT – Application October 12, 2005 – Application for a waiver of Rules of Procedure for an extension of time to complete construction and to obtain a certificate of occupancy which expired September 12, 2004.

PREMISES AFFECTED – 230-234 East 124th Street, south side of 124th Street between Second Avenue and Third Avenue, Block 1788, Lots 35 & 37, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to February 28, 2006, at 10 A.M., for decision, hearing closed.

54-01-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Michael Koegel and Francesca Koegel, owners.

SUBJECT – Application December 13, 2005 – request for an extension of time to complete construction and obtain a new certificate of occupancy which expires on January 8, 2006.

PREMISES AFFECTED – 2508 Avenue J, between Bedford Avenue and East 26th Street, Block 7607, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to February 28, 2006, at 10 A.M., for decision, hearing closed.

136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel-Net Holding, Inc., owner.

SUBJECT – Application November 23, 2005 – Reopening for an amendment to the resolution to extend the time to complete construction which expires June 11, 2006.

PREMISES AFFECTED – 11-11 44th Drive, north side between 11th and 21st Street, Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 7, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

139-05-A

APPLICANT – Valentino Pompeo for Breezy Point Cooperative, owner Dimitrios Tzentelis, lessee.

SUBJECT – Application June 6, 2005 – Proposed enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law.

PREMISES AFFECTED – 972 Bayside Walk, W/S Bayside Walk west of Rockaway Point Boulevard, Block 16350 part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Valentino Pompeo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 3, 2005, acting on Department of Buildings Application No. 402023877, reads:

- “A1- The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York:
- A) Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
 - B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space [and] is contrary to Section

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27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on February 7, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated December 15, 2005, the Fire Department states that it has reviewed the subject application and has no objections; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 3, 2005, acting on Department of Buildings Application No.402023877, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 6, 2005”– (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

300-05-A

APPLICANT – Zygmunt Staszewski for Breezy Point Cooperative, owner Ed Keisel, lessee.

SUBJECT – Application October 6, 2005 - Proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system is contrary to the Buildings Department Policy.

PREMISES AFFECTED – 995 Bayside, East of Bayside, 0 ft North of West Market Street, Block 16350 part of Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 09, 2005, acting on Department of Buildings Application No. 402178751, reads:

“A1- The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York:

A) Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space [and] is contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgrade of a private disposal system is contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on February 7, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated December 29, 2005, the Fire Department states that it has reviewed the subject application and has no objections; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 09, 2005, acting on Department of Buildings Application No. 402178751, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received October 6, 2005”–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

316-05-A

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APPLICANT – Zygmunt Staszewski for Breezy Point Cooperative, owner Tim Reid, lessee.

SUBJECT – Application October 28, 2005 - Proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system is contrary to the Buildings Department Policy.

PREMISES AFFECTED – 3 West Market Street, South of West Market Street 15.24 Feet of Beach 204th Street Block 16350 part of Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 18, 2005, acting on Department of Buildings Application No. 402165731, reads:

- “A1- The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York:
- A) Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
 - B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space [and] is contrary to Section 27-291 of the Administrative Code.
- A2- The proposed upgrade of a private disposal system is contrary to Department of Buildings policy”; and

WHEREAS, a public hearing was held on this application on February 7, 2006 after due notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated December 29, 2005, the Fire Department states that it has reviewed the subject application and has no objections; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 18, 2005, acting on Department of Buildings Application No. 40216573, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received October 28, 2005”–(1) sheet; that the proposal shall

comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

335-05-A

APPLICANT – Gary Lenhart for Breezy Point Cooperative, owner; J. Mary Schumacher, lessee.

SUBJECT – Application November 23, 2005 - Proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system located in the bed of a service lane is contrary to the Buildings Department Policy.

PREMISES AFFECTED –3 Kildare Walk, E/S Kildare Walk 35.07 S/O Oceanside Avenue, Block 16350 part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 17, 2005 acting on Department of Buildings Application No. 402171948, reads:

- “A1- The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York:
- A) Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
 - B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space [and] is contrary to Section 27-291 of the Administrative Code.
- A2- The proposed upgraded private disposal system

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is in the bed of a service lane contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on February 7, 2006 after notice by publication in the *City Record*, on which date the matter was closed and decided; and

WHEREAS, by letter dated December 15, 2005, the Fire Department states that it has reviewed the subject application and has no objections; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated November 17, 2005, acting on Department of Buildings Application No. 402171948, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received January 24, 2006” – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

162-05-A

APPLICANT – Jay Segal, Esq., Greenberg & Traurig, LLP, for William R. Rupp, owner.

SUBJECT - Application filed July 15, 2005 - to appeal a final determination from the Department of Buildings dated June 15, 2005 in which they contend that the a privacy wall must be demolished because it exceeds the height limitation set by the Building Code and that the project engineer has failed to show that the Wall has been engineered and built according to code.

PREMISES AFFECTED - 19-21 Beekman Place, a/k/a 461 East 50th Street, located at east side of Beekman Place between East 50th Street and East 51st Street, Block 1361, Lot 117, Borough of Manhattan.

COMMUNITY BOARD#6BK

APPEARANCES –

For Applicant: Jay Segal.

For Opposition: Stephen Rizzo.

For Administration: Zanine Gaylard.

ACTION OF THE BOARD – Laid over to April 4, 2006, at 10 A.M., for continued hearing.

189-05-A

APPLICANT – James Periconi for Olive Freud, Hudson Waterfront Associates, owners et al.

SUBJECT – Application filed on September 7, 2005 – An appeal challenging the Department of Building’s issuance of Temporary Certificate of Occupancies for 240 Riverside Boulevard (Building A) before the completion of the roadway connection between 72nd Street and Riverside Boulevard.

PREMISES AFFECTED – 240 Riverside Boulevard, (Building A), Block 1171, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: James Periconi, Olive Freud and Thomas Caffrey.

For Opposition: Steven Russo for Hudson Waterfront.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 7, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar and
Commissioner Chin.

Absent: Commissioner Collins.

ZONING CALENDAR

164-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for 2241 Westchester Avenue Realty Corp., owner; Gotham City Fitness LLC, lessee.

SUBJECT – Application April 22, 2004 – under Z.R. §73-36 to permit the proposed physical culture establishment, located on the second floor of an existing two story commercial building, located in C2-6 within an R6 zoning district, is contrary to Z.R. §32-00.

PREMISES AFFECTED – 2241 Westchester Avenue, a/k/a 2101 Glede Avenue, Block 3963, Lot 57, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated May 1, 2004, acting on Department of Buildings Application No. 200827132, reads, in pertinent part:

“Proposal of Physical Culture or Health Establishment as per section 12-10 definition of the Zoning Resolution. Therefore it must comply with the regulations of Sec. 73-36 of ZR”; and

WHEREAS, this is an application under Z.R. §§73-36 and 73-03, to permit, within a C2-2(R6) zoning district, the legalization of an existing physical culture establishment (“PCE”) located on the second story of a two-story commercial building, contrary to Z.R. § 32-10; and

WHEREAS, a public hearing was held on this application on January 10, 2006, after due notice by publication in *The City Record*, and then to decision on February 7, 2006; and

WHEREAS, Community Board 10, Bronx, recommends disapproval of this application, because it is for a legalization of an existing facility; and

WHEREAS, the New York City Fire Department has

indicated to the Board that is has no objection to this application; and

WHEREAS, the subject site is located on the northwest corner of Westchester and Glebe Avenues, and has a lot area of 22,771 sq. ft.; and

WHEREAS, the subject PCE will occupy 13,836.76 sq. ft. of floor area on the second floor; and

WHEREAS, the applicant represents that the PCE will provide weight equipment, aerobics, and martial arts, and massage services by licensed massage professionals; and

WHEREAS, the applicant states that an approved interior fire alarm system will be installed in the entire PCE space on the second floor, with the addition of smoke detectors, manual pull stations, local audible and visual alarms, and be connected to a FDNY-approved Central Station; and

WHEREAS, the PCE will have the following hours of operation: Monday through Friday 5AM to 12AM and Saturday and Sunday 7AM to 9PM; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to Z.R. §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement 04-BSA-170X, dated November 7, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the

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environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03, to permit, within a C2-2(R6) zoning district, the legalization of an existing physical culture establishment located on the second story of a two-story commercial building, contrary to Z.R. §32-10; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received January 23, 2006"- (2) sheets and on further condition:

THAT the term of this grant shall from July 15, 2004, expiring on July 15, 2014;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Friday 5AM to 12AM and Saturday and Sunday 7AM to 9PM;

THAT all massages shall be performed only by practitioners with valid and current NYS massage licenses;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained within one year from the date of this grant;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

280-04-BZ

APPLICANT - Gerald Caliendo ,RA. for the North Shore Tennis & Racquet Club, owner.

SUBJECT - Application August 10, 2004 - pursuant to Section Z.R.§72-21 to permit the proposed two temporary air supported structures to cover 10 tennis courts accessory to

non-commercial club contrary to Z.R. §§52-22 and 52-30 and also located in the bed of a mapped street contrary to General City Law Section 35 in an R-2A zoning district.

PREMISES AFFECTED - 34-28 214th Place west side of 214th Place distant 104.27 feet south of corner formed by intersection of 214th Place and 33rd Road, Block 6118, Lot 21, Borough of Queens.

COMMUNITY BOARD #11

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decisions of the Queens Borough Commissioner, dated November 17, 2005 and November 21, 2005, acting on Department of Buildings Application No. 440174380, read, in pertinent part:

“Enclosure of tennis court by an air supported structure in R2A zoning district is contrary to section 52-22 Z.R. – Structural Alterations and 52-30 – Change of Non-Conforming Use.”; and

WHEREAS, these are applications made under Z.R. §72-21, to permit, in a R2A zoning district, the installation of a temporary air supported structure over one existing group of four tennis courts and another over a separate existing group of six tennis courts, all located within a lawfully non-conforming tennis club, which is contrary to Z.R. §§52-22 and 52-30; and

WHEREAS, these applications are being brought concurrently with two companion General City Law §35 waiver applications, under BSA Cal. Nos. 281-04-A and 283-04-A, to allow construction within the bed of mapped but unopened streets that affect the property, decided the date hereof; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in the *City Record*, and then to decision on February 7, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board No. 11, Queens, recommends conditional approval of this application; certain of said conditions are reflected below; and

WHEREAS, the Queens Borough President also recommends approval of this application; and

WHEREAS, the premises is a large, approximately 113,856 sq. ft. site bounded by 33rd Road to the north, 214th Place to the east, 34th Road to the south (which is mapped but not open), and 214th Street to the west (which is mapped but not open); and

WHEREAS, the site is currently developed as a Use Group 4 not-for-profit tennis club (the “Club”), with a two-story clubhouse, 14 open tennis courts, a squash court and a

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badminton court; and

WHEREAS, the applicant proposes to enclose with temporary air supported structures two groups of tennis courts: one group of four tennis courts located in the middle of the site partially within 214th Street (282-04-BZ) and one group of six tennis courts located parallel to and partially within 34th Road (280-04-BZ); and

WHEREAS, the proposed structures will be lighted enclosures rising to a height of 36 ft., and will be used only from October 1 to April 30; and

WHEREAS, based upon its review of the record, the Board observes that the site has been historically developed with a non-conforming tennis club since 1926, with numerous tennis courts and only a single club building; and

WHEREAS, the Board also observes in order for the Club to meet its programmatic need of providing services that improve the well-being and physical health of its current and future members, provision of year-round tennis services is necessary; and

WHEREAS, in support of the contention that the lack of year round tennis is compromising the Club's mission, the applicant has submitted accounting statements that reflect the Club's losses in recent years; and

WHEREAS, the applicant represents that without the structures, the Club would continue to lose revenue; and

WHEREAS, while the two proposed enclosures will allow the Club to provide year-round tennis, structural improvements to lawful non-conforming uses such as the tennis courts are not allowed as of right; and

WHEREAS, accordingly, the Board finds that the unique condition mentioned above, namely the site's history of development with tennis courts, when considered in conjunction with the programmatic needs of the Club, create practical difficulties and unnecessary hardship in developing the entire site in strict compliance with applicable zoning provisions; and

WHEREAS, the applicant need not address Z.R. § 72-21(b) since the Club a not-for-profit organization and the alterations will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance, if granted, will not negatively impact the character of the community, nor impact adjacent residential uses; and

WHEREAS, the applicant states that the immediate area surrounding the site is characterized by one, two and three-story residential building, as well as some other community facilities; and

WHEREAS, in response to concerns of the Community Board, the applicant conducted a shadow study that showed that the proposed enclosures would not create significant shadow effects upon adjacent conforming uses; and

WHEREAS, at hearing, the Board inquired as to why the particular tennis courts were chosen to be enclosed, and expressed concern that other courts could be enclosed with less impact upon the residential neighbors; and

WHEREAS, the applicant stated that the enclosures were placed on particular courts because it was determined that it

would create the least impact on neighboring residential uses; and

WHEREAS, based upon the above, the Board finds that the subject application, if granted, will not alter the essential character of the surrounding neighborhood or impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not self-created by the owner or a predecessor in title; and

WHEREAS, this proposal is the minimum necessary to afford relief to the Club; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.05-BSA-027Q dated June 3, 2005 ; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. § 72-21, to permit, in a R2A zoning district, the installation of a temporary air supported structure over one existing group of four tennis courts and another over a separate existing group of six tennis courts, all located within a lawful non-conforming tennis club, which is contrary to Z.R. §§ 52-22 and 52-30; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received February 6, 2006"- (4) sheets; and *on further condition*:

THAT the enclosures shall only be used from October 1 to April 30;

THAT the hours of operation of tennis activity within the

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enclosures shall be from 7AM to 10PM Monday through Sunday;

THAT any air compressors will be located between tennis courts, away from adjacent residential uses, and shall be soundproofed;

THAT the enclosures shall be composed of material sufficient to prevent ambient light from affecting adjacent residential uses;

THAT all interior and exterior lighting shall be directed downwards and away from adjacent residential uses;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

281-04-A

APPLICANT - Gerald Caliendo ,RA. for the North Shore Tennis & Racquet Club, owner.

SUBJECT - Application August 10, 2004 - to permit the proposed two temporary air supported structures to cover 10 tennis courts accessory to non-commercial club contrary to Z.R. §§52-22 and 52-30 and also located in the bed of a mapped street contrary to General City Law Section 35 in an R-2A zoning district..

PREMISES AFFECTED - 34-28 214th Place west side of 214th Place distant 104.27 feet south of corner formed by intersection of 214th Place and 33rd Road, Block 6118, Lot 21, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decisions of the Queens Borough Commissioner, dated November 17, 2005 and November 21, 2005, acting on Department of Buildings Application Nos. 401743805, read, in pertinent part:

“Enclosure of tennis court by an air supported structure in R2A zoning district is contrary to section 52-22 Z.R. – Structural Alterations and 52-30 – Change of Non-Conforming Use.”; and

WHEREAS, these are applications made under Z.R. §72-21, to permit, in a R2A zoning district, the installation of a temporary air supported structure over one existing group of four tennis courts and another over a separate existing group of six tennis courts, all located within a lawfully non-conforming tennis club, which is contrary to Z.R. §§ 52-22 and 52-30; and

WHEREAS, these applications are being brought concurrently with two companion General City Law §35 waiver applications, under BSA Cal. Nos. 281-04-A and 283-04-A, to allow construction within the bed of mapped but unopened streets that affect the property, decided the date hereof; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in the *City Record*, and then to decision on February 7, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board No. 11, Queens, recommends conditional approval of this application; certain of said conditions are reflected below; and

WHEREAS, the Queens Borough President also recommends approval of this application; and

WHEREAS, the premises is a large, approximately 113,856 sq. ft. site bounded by 33rd Road to the north, 214th Place to the east, 34th Road to the south (which is mapped but not open), and 214th Street to the west (which is mapped but not open); and

WHEREAS, the site is currently developed as a Use Group 4 not-for-profit tennis club (the “Club”), with a two-story clubhouse, 14 open tennis courts, a squash court and a badminton court; and

WHEREAS, the applicant proposes to enclose with temporary air supported structures two groups of tennis courts: one group of four tennis courts located in the middle of the site partially within 214th Street (282-04-BZ) and one group of six tennis courts located parallel to and partially within 34th Road (280-04-BZ); and

WHEREAS, the proposed structures will be lighted enclosures rising to a height of 36 ft., and will be used only from October 1 to April 30; and

WHEREAS, based upon its review of the record, the Board observes that the site has been historically developed with a non-conforming tennis club since 1926, with numerous tennis courts and only a single club building; and

WHEREAS, the Board also observes in order for the Club to meet its programmatic need of providing services that improve the well-being and physical health of its current and future members, provision of year-round tennis services is necessary; and

WHEREAS, in support of the contention that the lack of year round tennis is compromising the Club’s mission, the applicant has submitted accounting statements that reflect the Club’s losses in recent years; and

WHEREAS, the applicant represents that without the structures, the Club would continue to lose revenue; and

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WHEREAS, while the two proposed enclosures will allow the Club to provide year-round tennis, structural improvements to lawful non-conforming uses such as the tennis courts are not allowed as of right; and

WHEREAS, accordingly, the Board finds that the unique condition mentioned above, namely the site's history of development with tennis courts, when considered in conjunction with the programmatic needs of the Club, create practical difficulties and unnecessary hardship in developing the entire site in strict compliance with applicable zoning provisions; and

WHEREAS, the applicant need not address Z.R. § 72-21(b) since the Club a not-for-profit organization and the alterations will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance, if granted, will not negatively impact the character of the community, nor impact adjacent residential uses; and

WHEREAS, the applicant states that the immediate area surrounding the site is characterized by one, two and three-story residential building, as well as some other community facilities; and

WHEREAS, in response to concerns of the Community Board, the applicant conducted a shadow study that showed that the proposed enclosures would not create significant shadow effects upon adjacent conforming uses; and

WHEREAS, at hearing, the Board inquired as to why the particular tennis courts were chosen to be enclosed, and expressed concern that other courts could be enclosed with less impact upon the residential neighbors; and

WHEREAS, the applicant stated that the enclosures were placed on particular courts because it was determined that it would create the least impact on neighboring residential uses; and

WHEREAS, based upon the above, the Board finds that the subject application, if granted, will not alter the essential character of the surrounding neighborhood or impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not self-created by the owner or a predecessor in title; and

WHEREAS, this proposal is the minimum necessary to afford relief to the Club; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.05-BSA-027Q dated June 3, 2005 ; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §72-21, to permit, in a R2A zoning district, the installation of a temporary air supported structure over one existing group of four tennis courts and another over a separate existing group of six tennis courts, all located within a lawful non-conforming tennis club, which is contrary to Z.R. §§ 52-22 and 52-30; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received February 6, 2006"- (4) sheets; and *on further condition*:

THAT the enclosures shall only be used from October 1 to April 30;

THAT the hours of operation of tennis activity within the enclosures shall be from 7AM to 10PM Monday through Sunday;

THAT any air compressors will be located between tennis courts, away from adjacent residential uses, and shall be soundproofed;

THAT the enclosures shall be composed of material sufficient to prevent ambient light from affecting adjacent residential uses;

THAT all interior and exterior lighting shall be directed downwards and away from adjacent residential uses;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

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282-04-BZ

APPLICANT - Gerald Caliendo ,RA. for the North Shore Tennis & Racquet Club, owner.

SUBJECT - Application August 10, 2004 - pursuant to Section Z.R.§72-21 to permit the proposed two temporary air supported structures to cover 10 tennis courts accessory to non-commercial club contrary to Section 52-22ZR and also located in the bed of a mapped street contrary to General City Law Section 35 in an R-2A zoning district.

PREMISES AFFECTED - 34-28 214th Place west side of 214th Place distant 104.27 feet south of corner formed by intersection of 214th Place and 33rd Road, Block 6119,

Lots: 1& 32, Borough of Queens.

COMMUNITY BOARD #11

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, acting on Application No. 40174379, dated November 17, 2005, and November 21, 2005, which read in pertinent part:

“Proposed enclosure of tennis court by air supported structure is in the bed of mapped street. Comply with Section 35 of the General City Law, refer to the Board of Standards & Appeals for an Administrative Appeal”; and

WHEREAS, a public hearing was held on this application on December 13, 2005, after due notice by publication in the *City Record*, and then to decision on February 7, 2006 and

WHEREAS, these application were filed in conjunction with BSA Cal. Nos. 280-04-BZ and 282-04-BZ, which are variance applications under Z.R. §72-21, to permit the enclosures of tennis court by an air supported structures; the variance applications were also decided the date hereof; and

WHEREAS, Community Board 11, Queens recommends approval of this application with conditions; and

WHEREAS, by letter dated May 11, 2005, the Department of Environmental Protection (DEP) states that is has reviewed the above project, and requests that a 35 foot Sewer Corridor in the bed of mapped 214th Street between 33rd and 34th Rd be provided for the purpose of repair, maintenance and/or reconstruction of existing sewers and water mains; and

WHEREAS, DEP also requests that no permanent structures be built within this “Sewer Corridor”, and requires that the applicant amend the Drainage Plan #39 ASW(25) and #39AS-1(33) for 34th Road between 214th Street and 214th Place; and

WHEREAS to ensure the completion of the amendment to the Drainage Plan, the applicant shall submit a security deposit of \$5,000 to be held by the Comptroller’s Office until such time

as the Drainage Plan is amended to DEP ‘s satisfaction and

WHEREAS, by letter dated June 3, 2005 the applicant agrees to accept DEP’s conditions and will make the required amendments; and

WHEREAS, by letter dated February 23, 2005, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the decisions of the Borough Commissioner, acting on Application No. 401744379, dated November 17, 2005 and November 21, 2005, are modified under the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received February 6, 2006”-(4) sheets; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT a 35 foot Sewer Corridor in the bed of mapped 214th Street between 33rd and 34th Roads be provided for the purpose of repair, maintenance and /or reconstruction of existing sewers and water mains;

THAT no permanent structures may be built within this “Sewer Corridor”;

THAT the applicant amend the Drainage Plan #39 ASW(25) and #39AS-1(33) for 34th Road between 214th Street;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals February 7, 2006.

283-04-A

APPLICANT - Gerald Caliendo ,RA. for the North Shore Tennis & Racquet Club, owner.

SUBJECT - Application August 10, 2004 - pursuant to Section Z.R.§72-21 to permit the proposed two temporary air supported structures to cover 10 tennis courts accessory to non-commercial club contrary to Section 52-22ZR and also located in the bed of a mapped street contrary to General City Law Section 35 in an R-2A zoning district.

PREMISES AFFECTED - 34-28 214th Place west side of 214th Place distant 104.27 feet south of corner formed by intersection of 214th Place and 33rd Road, Block 6118, Lots: 1& 32, Block 6119, Lot 21, Borough of Queens.

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COMMUNITY BOARD #11

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, acting on Application No. 401743798, dated November 17, 2005, and November 21, 2005, which read in pertinent part:

“Proposed enclosure of tennis court by air supported structure is in the bed of mapped street. Comply with Section 35 of the General City Law, refer to the Board of Standards & Appeals for an Administrative Appeal”; and

WHEREAS, a public hearing was held on this application on December 13, 2005, after due notice by publication in the *City Record*, and then to decision on February 7, 2006 and

WHEREAS, these application were filed in conjunction with BSA Cal. Nos. 280-04-BZ and 282-04-BZ, which are variance applications under Z.R. §72-21, to permit the enclosures of tennis court by an air supported structures; the variance applications were also decided the date hereof; and

WHEREAS, Community Board 11, Queens recommends approval of this application with conditions; and

WHEREAS, by letter dated May 11, 2005, the Department of Environmental Protection (DEP) states that is has reviewed the above project, and requests that a 35 foot Sewer Corridor in the bed of mapped 214th Street between 33rd and 34th Rd be provided for the purpose of repair, maintenance and/or reconstruction of existing sewers and water mains; and

WHEREAS, DEP also requests that no permanent structures be built within this “Sewer Corridor”, and requires that the applicant amend the Drainage Plan #39 ASW(25) and #39AS-1(33) for 34th Road between 214th Street and 214th Place; and

WHEREAS to ensure the completion of the amendment to the Drainage Plan, the applicant shall submit a security deposit of \$5,000 to be held by the Comptroller’s Office until such time as the Drainage Plan is amended to DEP’s satisfaction and

WHEREAS, by letter dated June 3, 2005 the applicant agrees to accept DEP’s conditions and will make the required amendments; and

WHEREAS, by letter dated February 23, 2005, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the decisions of the Borough Commissioner, acting on Application No. 401743798, dated November 17, 2005 and November 21, 2005, are modified under the power vested in the Board by Section 35

of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received February 6, 2006”-(4) sheets; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT a 35 foot Sewer Corridor in the bed of mapped 214th Street between 33rd and 34th Roads be provided for the purpose of repair, maintenance and /or reconstruction of existing sewers and water mains;

THAT no permanent structures may be built within this “Sewer Corridor”;

THAT the applicant amend the Drainage Plan #39 ASW(25) and #39AS-1(33) for 34th Road between 214th Street;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals February 7, 2006.

40-05-BZ

APPLICANT – Petraro & Jones for Rafael Sassouni, owner; Graceful Services, Inc., lessee.

SUBJECT - Application April 21, 2005 – under Z.R. §73-36 to permit a legalization of a physical cultural establishment to be located on the second floor of four story mixed use building. The PCE use will contain 285 square feet to be used in conjunction with an existing physical cultural establishment on the second floor (988 Square feet)located at 1097 Second Avenue, Manhattan.

PREMISES AFFECTED – 1095 Second Avenue, west side of Second Avenue , 60.5 feet south of intersection with East 58th Street, Block1331, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Steven Simich.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 10, 2005, acting on Department of Buildings Application No. 103997837, reads, in pertinent

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part:

“Proposed physical culture establishment is not permitted in C2-8 District (ZR 32-31)”;

WHEREAS, this is an application under Z.R. §§ 73-36 and 73-03, to permit, within a C2-8 zoning district in the Special Transit Land Use District (“TA”), the legalization of an existing physical culture establishment (“PCE”) located on the second story of a four-story commercial building, contrary to Z.R. § 32-10; and

WHEREAS, a public hearing was held on this application on December 6, 2005, after due notice by publication in *The City Record*, with a continued hearing on January 24, 2006, and then to decision on February 7, 2006; and

WHEREAS, Community Board 6, Manhattan, recommends conditional approval of this application; said condition was that a connection between the subject PCE and an existing adjacent PCE be provided; and

WHEREAS, the New York City Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the western side of Second Avenue, 60 ft. south of the intersection with East 58th Street, and has a lot area of 2,400 sq. ft.; and

WHEREAS, the subject PCE will occupy 825 sq. ft. of floor area on the second floor; and

WHEREAS, the applicant represents that the subject PCE is located adjacent to another second-floor PCE at 1097 Second Avenue, a special permit for which was granted by the Board in 2004; and

WHEREAS, the applicant represents that the subject PCE will be connected to the adjacent PCE (said connection has been approved by DOB), and that the two PCEs are operated by the same operator; and

WHEREAS, at hearing, the Board expressed concern about the location of the PCE in what was formerly an apartment and an office, on the same floor as existing apartments; and

WHEREAS, at the request of the Board, the applicant obtained from DOB a reconsideration indicating DOB acceptance of the location of the PCE; and

WHEREAS, the applicant represents that the PCE will provide massage services by licensed massage professionals; and

WHEREAS, the applicant states that an approved interior fire alarm system will be installed in the entire PCE space on the second floor, with the addition of smoke detectors, manual pull stations, local audible and visual alarms, and be connected to a FDNY-approved Central Station; and

WHEREAS, the PCE will have the following hours of operation: 10AM to 10PM daily; and

WHEREAS, the applicant represents that the PCE will not conflict with any of the applicable regulations of the TA; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent

properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to Z.R. §§73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement 05-BSA-097M, dated February 24, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03, to permit, within a C2-8 zoning district in the Special Transit Land Use District, the legalization of an existing physical culture establishment located on the second story of a four-story commercial building, contrary to Z.R. § 32-10; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received January 26, 2006”- (4) sheets; and *on further condition*:

THAT the term of this grant shall be from March 1, 2005, expiring on September 26, 2011;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 10AM

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to 10PM daily;

THAT all massages shall be performed only by practitioners with valid and current NYS massage licenses;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained within one year from the date of this grant;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

93-05-BZ

APPLICANT – Eric Palatnik, P.C., for Esther Cynamon, owner.

SUBJECT – Application November 4, 2005 – under Special Permit Z.R. §73-36. Enlargement of a single family home to vary section Z.R. §23-141 for floor area and open space. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 2621 Avenue M, corner of Avenue “M” and East 27th Street, Block 7644, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 8, 2005, acting on Department of Buildings Application No. 301909683, reads, in pertinent part:

“ZR 23-141 Floor Area is greater than allowed. ZR 23-141 Open Space is less than required”; and

WHEREAS, this is an application under Z.R. §§ 73-622

and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR) and Open Space Ratio (OSR), contrary to Z.R. § 23-141; and

WHEREAS, a public hearing was held on this application on January 10, 2006, after due notice by publication in *The City Record*, and then to decision on February 7, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the corner of Avenue M and East 27th Street; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,177 sq. ft. (0.54 Floor Area Ratio or “FAR”) to 3,231 sq. ft. (0.74 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the OSR from 140% to 106%; the minimum required OSR is 150%; and

WHEREAS, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio and Open Space Ratio, contrary to Z.R. § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received January 25, 2006”- (11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

MINUTES

THAT the total FAR on the premises shall not exceed 0.74;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

171-05-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP for Equinox 568 Broadway Inc., lessee, 568 Broadway Properties LLC, owner.

SUBJECT – Application July 28, 2005 – Special Permit: Under ZR Section 73-36 an approval sought to permit the operation of a physical cultural establishment located on a portion of the cellar, portion of the first floor, part of the mezzanine, entire second floor, and a portion of the third floor of a twelve story commercial building . The PCE use will contain 26, 712 square feet of floor area. The site is located in a M1-5B Zoning District (SOHO Cast Iron).

PREMISES AFFECTED – 568 Broadway aka 69-79 Prince Street and 108-112 Crosby Streets, Block 512, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 18, 2005, acting on Department of Buildings Application No. 104165154, reads, in pertinent part:

“As specified under the provisions of Section 73-36 of the Zoning Resolution, physical culture establishments, not permitted under Use Group 9, require a special permit to be granted by the Board of Standards and Appeals.”; and

WHEREAS, this is an application under Z.R. §§73-36 and 73-03, to permit, within a M1-5B zoning district within the Special SoHo Cast Iron District, a physical culture establishment (“PCE”) located in the cellar and lower floors of a twelve-story commercial building, contrary to Z.R. § 32-10; and

WHEREAS, a public hearing was held on this application on January 31, 2006, after due notice by publication in *The City Record*, and then to decision on February 7, 2006; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the New York City Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, a certificate of appropriateness has been obtained from the Landmarks Preservation Commission; and

WHEREAS, the subject site is located on the northeast corner of Broadway and Prince Street, and has a lot area of 23,605 sq. ft.; and

WHEREAS, the subject PCE (an Equinox gym) will occupy approximately 26,712 sq. ft. of floor area; and

WHEREAS, specifically, the applicant represents that the PCE will be located in portions of the cellar (1,236 sq. ft.), first floor (1,496 sq. ft.), mezzanine (413 sq. ft.), and third floor (3,756 sq. ft.), as well as the entire second floor (19,802 sq. ft.); and

WHEREAS, the applicant represents that the PCE will provide gym equipment, aerobics, other classes in physical improvement and massage services by licensed massage professionals; and

WHEREAS, the applicant states that an approved interior fire alarm system will be installed in the entire PCE space, with the addition of smoke detectors, manual pull stations, local audible and visual alarms, and be connected to a FDNY-approved Central Station; and

WHEREAS, the PCE will have the following hours of operation: Monday through Thursday 5:30AM to 11PM, Friday 5:30AM to 10PM, and Saturday and Sunday 8AM to 9PM; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to Z.R. §§73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

MINUTES

Assessment Statement 06-BSA-005M, dated July 29, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§73-36 and 73-03, to permit, within a M1-5B zoning district within the Special SoHo Cast Iron District, a physical culture establishment located in the cellar and lower floors of a twelve-story commercial building, contrary to Z.R. §32-10; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received February 1, 2006"- (9) sheet; and *on further condition*:

THAT the term of this grant shall be for ten years, from February 7, 2006 to February 7, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday 5:30AM to 11PM, Friday 5:30AM to 10PM, and Saturday and Sunday 8AM to 9PM;

THAT all massages shall be performed only by practitioners with valid and current NYS massage licenses;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained within one year from the date of this grant;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning

Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

172-05-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP for Equinox Joralemon Street, Inc., lessee, 50 Court Street Associates, owner.

SUBJECT – Application July 28, 2005 – Special Permit: Under ZR Section 73-36 an approval sought to permit the operation of a physical cultural establishment located on a portion of the ground floor, part of the mezzanine, entire second, third and fourth floors of a twelve story commercial building. The PCE use will contain 31, 538 square feet of floor area. The site is located in a C5-2 A Zoning District(DB).

PREMISES AFFECTED – 50 Court Street aka 194-204 Joralemon Street, southwest corner of Court Street and Joralemon Street, Block 265, Lot # 43, Borough of Brooklyn. **COMMUNITY BOARD #2BK**

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 25, 2005, acting on Department of Buildings Application No. 301981470, reads, in pertinent part:

“As specified under the provisions of Section 73-36 of the Zoning Resolution, physical culture establishments, not permitted under Use Group 9, require a special permit to be granted by the Board of Standards and Appeals.”; and

WHEREAS, this is an application under Z.R. §§ 73-36 and 73-03, to permit, within a C5-2A zoning district in the Special Downtown Brooklyn District, a physical culture establishment (“PCE”) located in the ground and lower floors of a twelve-story commercial building, contrary to Z.R. § 32-10; and

WHEREAS, a public hearing was held on this application on January 31, 2006, after due notice by publication in *The City Record*, and then to decision on February 7, 2006; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the New York City Fire Department has indicated to the Board that is has no objection to this application; and

WHEREAS, the subject site is located on the southwest corner of Court and Joralemon Streets, and has a lot area of

MINUTES

10,035 sq. ft.; and

WHEREAS, the subject PCE (an Equinox gym) will occupy approximately 31,583 sq. ft. of floor area; and

WHEREAS, specifically, the applicant represents that the PCE will be located in portions of the ground floor (2,480 sq. ft.) and mezzanine (4,020 sq. ft.), as well as the entire second, third and fourth floors (8,361 sq. ft. each); and

WHEREAS, the applicant represents that the PCE will provide gym equipment, aerobics, other classes in physical improvement and massage services by licensed massage professionals; and

WHEREAS, the applicant states that an approved interior fire alarm system will be installed in the entire PCE space, with the addition of smoke detectors, manual pull stations, local audible and visual alarms, and be connected to a FDNY-approved Central Station; and

WHEREAS, the PCE will have the following hours of operation: Monday through Thursday 5:30AM to 11PM, Friday 5:30AM to 10PM, and Saturday and Sunday 8AM to 9PM; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to Z.R. §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement 06-BSA-006K, dated July 28, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the

environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03, to permit, within a C5-2A zoning district within the Special Downtown Brooklyn District, a physical culture establishment located in the ground and lower floors of a twelve-story commercial building, contrary to Z.R. § 32-10; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received February 1, 2006"- (8) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from February 7, 2006 to February 7, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday 5:30AM to 11PM, Friday 5:30AM to 10PM, and Saturday and Sunday 8AM to 9PM;

THAT all massages shall be performed only by practitioners with valid and current NYS massage licenses;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2006.

373-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Brendan McCartan, owner.

SUBJECT – Application November 26, 2004 – under Z.R. §72-21 in an R4 district, permission sought to allow the construction of a two-story one-family dwelling on a 25' x 53.55' lot consisting of 1,338 SF. The structure does not comply with floor area allowed, open space, lot area, front yard.

MINUTES

PREMISES AFFECTED – 57-69 69th Street, north side of 69th Street 24' west of 60th Avenue, Block 2830, Lot 33, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to February 28, 2006, at 1:30 P.M., for continued hearing.

396-04-BZ

APPLICANT – Stroock & Stroock & Lavan, LLP, by Ross Moskowitz, Esq., for S. Squared, LLC, owner.

SUBJECT – Application December 21, 2004 - under Z.R.§72-21 to permit the Proposed construction of a thirteen story, mixed use building, located in a C6-2A, TMU zoning district, which does not comply with the zoning requirements for floor area, lot coverage, street walls, building height and tree planting, is contrary to Z.R. §111-104, §23-145,§35-24(c)(d) and §28-12.

PREMISES AFFECTED -180 West Broadway, northwest corner, between Leonard and Worth Streets, Block 179, Lots 28 and 32, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for continued hearing.

100-05-BZ

APPLICANT – Martyn & Don Weston, for 223 Water Street, LLC, owner.

SUBJECT – Application April 25, 2005 - under Z.R.§72-21 to permit the proposed conversion of the second and third floors, of a six story manufacturing building, to residential use, Use Group 2, located in an M1-2 zoning district, is contrary to Z.R.§42-00.

PREMISES AFFECTED - 223 Water Street, aka 48 Bridge Street, northwest corner, Block 31, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston, Jack Guttman and Jack Freeman.

For Opposition: Raymon Gaspard and Julia Ryan.

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for continued hearing.

119-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sam Malamud, owner.

SUBJECT – Application May 16, 2005 - under Z.R.§72-21 to permit the proposed enlargement to an existing one and two story warehouse building, with an accessory office, Use Group 16, located in a C4-3 and R6 zoning district, which

does not comply with the zoning requirements for floor area, floor area ratio, perimeter wall height, parking and loading berths, is contrary to Z.R. §52-41, §33-122, §33-432, §36-21 and §36-62.

PREMISES AFFECTED - 834 Sterling Place, south side, 80' west of Nostrand Avenue, Block 1247, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Richard Lobel .

ACTION OF THE BOARD – Laid over to March 28, 2006, at 1:30 P.M., for continued hearing.

133-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Yitzchok Shindler. SUBJECT – Application November 30, 2005 – Under Z.R §73-622 to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per ZR 23-141 of the Zoning Resolution. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1231 East 21st Street, southeast corner of Avenue K and East 21st Street, Block 7621, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel, Chanie Shindler and Yitzchok Shindler.

For Opposition: Sondra Safier.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for continued hearing.

136-05-BZ

APPLICANT - Gerald J. Caliendo, R.A., A.I.A., for Irving Avenue Holding, LLC, owner.

SUBJECT- Application June 3, 2005 – Under Z.R. §72-21 to construct a two family, two story dwelling which does not comply with the front yard requirement pursuant to ZR§23-45 and is less than the required lot width/lot area pursuant to ZR§23-32. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 1901 Nereid Avenue, corner formed by intersection of the east side of Ely Avenue and North side of Nereid Avenue, Block 5092, Lot 10, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Sandy Anagnostov.

For Opposition: Joan Richards and Bob McGowan.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 1:30 P.M., for continued hearing.

137-05-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for Danny Dalal, owner.

SUBJECT – Application June 3, 2005 – Under Z.R. §72-21 to construct a one family, two story and attic dwelling which

MINUTES

does not comply with the minimum required lot width of 60'-0" as per ZR 23-32. The premise is located in an R1-2 zoning district.

PREMISES AFFECTED – 198-61 Foothill Avenue, north side of Foothill Avenue 230.47' from the corner of Foothill Avenue and Hillside Avenue, Block 10532, Lot 139, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Sandy Anagnostov .

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to February 28, 2006, at 1:30 P.M., for decision, hearing closed.

180-05-BZ

APPLICANT – Wachtel & Masyr for 1511 Third Avenue Association/Related/Equinox, owner.

SUBJECT – Application August 4, 2005 – Special Permit under Z.R.§§73-03 and 73-367 approval sought for the legalization of a physical culture establishment located on the entire second floor portion of the third floor and the entire fourth floor with a total of 34, 125sq.ft. of floor area. The site is located in a C2-8 zoning district.

PREMISES AFFECTED – 1511 Third Avenue aka 201 East 85th Street, northeast corner of 85th Street and Third Avenue, Block 1531, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jesse Masyr, Mark Ginsley, Ellen Hay and Marvin Mitzner .

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to February 28, 2006, at 1:30 P.M., for decision, hearing closed.

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, c/o Warren Hecht, Esq., contract vendee.

SUBJECT – Application November 4, 2005 – Under Z.R.§72-21 to permit the enlargement of an existing single family home and to change the use from residential to community facility. The enlargement is contrary to ZR §24-34 (rear yard) 24-35 (side yard) and 24-521 (sky exposure plane). The premise is located in an R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Northeast corner of Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to March 7, 2006, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: 3:40P.M.

BULLETIN

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February 24, 2006

DIRECTORY

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SATISH BABBAR, *Vice-Chair*

JAMES CHIN

CHRISTOPHER COLLINS

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329-05-BZ	460 Brielle Avenue, Staten Island
339-05-BZ	3574 Nostrand Avenue, Brooklyn

DOCKETS

New Case Filed Up to February 14, 2006

22-06-BZ

8 Gotham Avenue, Between Fane Court South Side and Shell Bank Creek, Block 8883, Lot 978, Borough of **Brooklyn, Community Board: 15**. Under 72-21-Proposed to erect enlargement over the front and rear existing one story portions of the building.

23-06-BZ

150-62 78th Road, Southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of **Queens, Community Board: 8**. Under 72-21-To legalize the enlargement of a three-story building housing a synagogue with an accessory Rabbi's apartment on the third floor.

24-06-A

227 Mansion Avenue, 94 ft N of the corner formed by the intersection of Cleveland & Mansion Avenues., Block 5206, Lot 26, Borough of **Staten Island, Community Board: 3**. Appeal-To legalize the placement of four on-site parking spaces on a segment of the site that lies within the bed of a mapped street.

25-06-BZ

2908 Nostrand Avenue, West side of Nostrand Avenue, distant 500' N from the corner of Nostrand & Ave P, Block 7690, Lot 79, Borough of **Brooklyn, Community Board: 15**. Under 72-21-Proposed to build a six story plus English Basement residential/community facility building.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

APRIL 11, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 11, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

360-49-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application November 14, 2005 – Pursuant to Z.R.§72-21 for an extension of term of the previously granted variance permitting the use of the site as a gasoline service station with accessory uses which expired on February 25, 2005. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 69-05 Eliot Avenue, northern corner of Eliot Avenue and 69th Street, Block 2838, Lot 38, Borough of Queens.

COMMUNITY BOARD #5Q

APPEALS CALENDAR

14-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Jeanine & Dan Fitzgerald, lessee.

SUBJECT – Application January 24, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting a mapped street contrary to GCL §36, Article 3.

PREMISES AFFECTED – 54 Graham Place, south side Graham Place, 158.86' west of Beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

20-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Mary Jane & Anthony Fortunato, lessee.

SUBJECT – Application February 7, 2006 – Proposed reconstruction and enlargement of a single family dwelling not fronting a mapped street contrary to GCL §36, Article 3. Upgrade existing non-conforming private disposal system in the bed of the service road contrary to Building Department policy.

PREMISES AFFECTED – 38 Kildare Walk, west side of Kildare Walk, 92.51' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

30-06-A

APPLICANT – Eric Hecker, Esq. of Emery Celli, Brinkcerhoff & Abady, LLP for Lamar Outdoor Advertising, lessee, EG Clemente Bros. owner.

SUBJECT – Application filed on February 21, 2006- For an appeal of the Department of Buildings decision dated January 19, 2006 revoking Advertising sign approvals and permits under Application Nos. 5000684324 and 500684315 in that it allows advertising signs that are not within 1/2 mile of the NYC Boundary and as such are in violation of Section 42-55 of the Zoning Resolution.

PREMISES AFFECTED – 50 South Bridge Street, between Arthur Kill Road and Page Avenue, Block 7584, Lot 122, Borough of Staten Island.

COMMUNITY BOARD #3SI

APRIL 11, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 11, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

249-04-BZ

APPLICANT – Harold Weinberg, PE for Prince Parkside LLP, owner.

SUBJECT – Application July 13, 2004 – Zoning Variance (bulk) pursuant to ZR §72-21 to allow an enlargement of an existing non-complying UG 2 residential building in an R7-1 district; contrary to ZR §§ 23-121, 54-31, 23-462, 25-241, 23-22.

PREMISES AFFECTED – 205 Parkside Avenue, Brooklyn; located between Ocean Avenue and Parkside Court (Block 5026, Lot 302), Borough of Brooklyn.

COMMUNITY BOARD #9BK

293-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 342 Realty, LLC, owner.

SUBJECT – Application September 29, 2005 - This application is filed pursuant to Z.R.§73-44 to request a Special Permit to allow a reduction of required parking for an as-of-right commercial building located within a C8-1 zoning district.

PREMISES AFFECTED – 8751 18th Avenue, between 18th Avenue and Bay 19th Street approximately 100 feet East of Bath Avenue, Block 6403, Lot 6, Borough of Brooklyn

COMMUNITY BOARD #11BK

19-06-BZ

CALENDAR

APPLICANT – Sheldon Lobel, P.C., for MiCasa HDFC, owner.

SUBJECT – Application January 27, 2006 – Under §72-21 to permit a proposed eight-story residential building which requires variance of Z.R. §§23-145 (floor area), 23-633 (height and setback) 25-25c (parking), 23-851(court regulations) and 23-861 (legal window), located in an R7-1 zoning district.

PREMISES AFFECTED – 745 Fox Street, entire block front of East 156th Street between Fox Street and Beck Street, Block 2707, Lot 11, Borough of The Bronx.

COMMUNITY BOARD #2BX

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 14, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meeting of the Board held on Tuesday morning and afternoon December 6, 2005 and Wednesday morning December 7, 2005, as printed in the bulletin of December 15, 2005, Vol. 90, No. 50. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

780-45-BZ

APPLICANT – Anthony G. Mango, for Guiseppe Rapisardi and Ann Rapisardi, owners.

SUBJECT – Application June 23, 2005 – Pursuant to Z.R. §11-413 the legalization of the existing/proposed change of use within the same Use Group 16 from a beer storage of trucks to a plumbing contractor’s establishment with storage of plumbing tools, equipment, supplies and the storage of equipment vans. The premise is located in an R6B zoning district.

PREMISES AFFECTED – 1818-1820 Bleecker Street, east side of Bleecker Street, 155’ north of Seneca Avenue, Block 3435, Lots 21 and 22, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Anthony Mango.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and, pursuant to Z.R. § 11-413, a legalization of a change in use from a Use Group 16 beer storage facility, with parking for trucks, to a UG 16 plumbing contractor’s establishment, with accessory storage of tools, supplies, and parking of equipment vans; and

WHEREAS, a public hearing was held on this application on January 10, 2006, after due notice by publication in *The City Record*, and then to decision on February 14, 2006; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, the subject premises is located on the east side of Bleecker Street, 155 ft. north of Seneca Avenue, and has a total lot area of approximately 4,694 sq. ft.; and

WHEREAS, the site is located within an R6B zoning district; and

WHEREAS, the site is improved upon with a 5,083 sq. ft.

one-story building currently occupied as a UG 16 plumbing contractor’s establishment; and

WHEREAS, on November 14, 1950, under the subject calendar number, the Board granted a variance to change the legal occupancy of the property from stables to beer storage; and

WHEREAS, the applicant represents that the current owner purchased the property in 2004, and has been occupying the property as a plumbing contractor’s establishment since then; and

WHEREAS, pursuant to Z.R. §11-413, the Board may authorize a change in the use previously granted by the Board to another use, so long as such change would be allowed pursuant to the applicable provisions of Article V of the ZR; and

WHEREAS, the applicable Article V provisions would allow the proposed change in use; and

WHEREAS, at hearing, the Board asked that the applicant modify the drawings to reflect correct door swing, adjacent buildings, and gates and doors that comply with the Board’s prior grant; and

WHEREAS, the applicant submitted revised plans that complied with these requests; and

WHEREAS, additionally, the Board asked the applicant to explain why a portion of the building that was proposed to be demolished as per the prior grant still remained on site, as well to explain a side canopy that was also not on the prior approved plans; and

WHEREAS, the applicant responded that the original structure slated to be demolished was in fact demolished, but it appeared that a subsequent structure was then constructed in its place; the applicant represents that the current owner will demolish and remove this structure; and

WHEREAS, the applicant also states that the side canopy will be removed; and

WHEREAS, based upon the submitted evidence, the Board finds the requested amendment appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on November 14, 1950, as subsequently amended, so that as amended this portion of the resolution shall read: “to permit a legalization of a change in use from a UG 16 beer storage facility, with parking for trucks, to a UG 16 plumbing contractor’s establishment, with accessory storage of tools, supplies, and parking of equipment vans, *on condition* that all work shall substantially conform to drawings as filed with this application, marked ‘Received February 13, 2006’–(4) sheets; and *on further condition*:

THAT the site shall remain graffiti-free and that any graffiti shall be removed within 24 hours;

THAT the hours of operation shall be from 8AM to 6 PM, Monday through Friday;

THAT there shall be no parking of vans in any portion of the open yard except during business hours;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not

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specifically waived by the Board remain in effect;

THAT prior to issuance of a new certificate of occupancy, the rear frame construction building and the side canopy shall be removed, as indicated on the BSA-approved plans;

THAT a new certificate of occupancy be obtained within one year from the date of this grant;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 402025759)

Adopted by the Board of Standards and Appeals, February 14, 2006.

469-64-BZ

APPLICANT – Charles Washington, for Heinz Vieluf, owner.

SUBJECT – Application August 19, 2005 – Amendment to a variance Z.R. §72-21 to propose a second floor office addition in conjunction with existing first floor of food processing plant operation. The premise is located in a C2-4 in an R6 zoning district. The second floor enlargement is fully within the C2-4 portion of the lot.

PREMISES AFFECTED – 630-634 St. Ann’s Avenue, north east corner of Westchester Avenue at St. Ann’s Avenue, Block 2617, Lot 1, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance, to permit the construction of a second floor office addition to an existing one-story plus mezzanine food processing plant; and

WHEREAS, a public hearing was held on this application on January 24, 2006 after due notice by publication in *The City Record*, and then to decision on February 14, 2006; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, the site is located partially within an R6 zoning district, and partially within a C2-4 zoning district; and

WHEREAS, the site is a 12,248 sq. ft. lot, improved upon with a 9,200 sq. ft. one -story plus mezzanine building currently occupied as a Use Group 17 food processing plant, which was

initially approved by the Board under the subject calendar number on July 31, 1964; and

WHEREAS, under BSA Cal. No. 856-68-BZ, the Board granted a new variance to allow a one and two story enlargement to the building; and

WHEREAS, on April 16, 1991, under the subject calendar number, the Board granted an amendment to legalize a further enlargement of the building, as well to approve construction of a loading berth; and

WHEREAS, the applicant represents that the owners of the food processing establishment need additional office space, necessitating an enlargement at the second floor; this enlargement would add 1,900 sq. ft. of commercial floor area to the subject building; and

WHEREAS, the applicant further represents that the proposed enlargement would be located within the C2-4 portion of the subject lot, and would comply with the C2-4 floor area requirements; and

WHEREAS, at hearing, the Board asked the applicant to clarify that the existing second floor was actually a mezzanine, as indicated on the certificate of occupancy; and

WHEREAS, the applicant responded by stating that the existing second level is in fact a mezzanine, and that this mezzanine will be incorporated as part of the proposed second floor enlargement; and

WHEREAS, based upon the submitted evidence, the Board finds the requested amendment appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on July 31, 1964, as subsequently amended, so that as amended this portion of the resolution shall read: “to permit the construction of a second floor office addition to an existing one-story plus mezzanine food processing plant, *on condition* that all work shall substantially conform to drawings as filed with this application, marked ‘Received August 19, 2005’–(3) sheets and ‘February 1, 2006’–(3) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 200866170)

Adopted by the Board of Standards and Appeals, February 14, 2006.

855-87-BZ

APPLICANT – Glen V. Cutrona, AIA, for Michael Beck, owner; Mueller Distributing, lessee.

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SUBJECT – Extension of Term of a Variance for an existing (UG16) warehouse with (UG6) office space on the mezzanine level. The term of variance expired on November 23, 2003. The premise is located in an R3A zoning district.

PREMISES AFFECTED – 15 Irving Place, Block 639, Lot 10, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening and an extension of the term of the previously granted variance; and

WHEREAS, a public hearing was held on this application on January 24, 2006, after due notice by publication in *The City Record*, and then to decision on February 14, 2006; and

WHEREAS, Community Board No. 1, Staten Island, recommends approval of this application; and

WHEREAS, the premises is a 5,000 sq. ft. site located within an R3A zoning district, and is located on Irving Place between Van Duzer and Delford Streets; and

WHEREAS, the site is improved upon with a 3,870 sq. ft. one-story warehouse; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1988, when, under the subject calendar number, the Board granted an application to permit the use of the site as a UG 16 warehouse; and

WHEREAS, subsequently, the term of this grant has been extended by the Board, most recently on December 6, 1994 for a term of 10 years, expiring on November 24, 2003; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on November 15, 1988, so that as amended this portion of the resolution shall read: “to extend the term for ten years from November 24, 2003, to expire on November 24, 2013, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received September 12, 2005’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 24, 2013;

THAT the hours of operation shall be from 8AM to 5 PM Monday through Friday;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 5007795525)

Adopted by the Board of Standards and Appeals, February 14, 2006.

4-95-BZ

APPLICANT – Harry Meltzer, R.A., for 21 Hillside LLC/Allan Goldman, owner.

SUBJECT – Application June 27, 2005 – Pursuant to ZR §11-411 for the extension of term of a Use Group 8 public parking lot for 48 cars. The premise is located in an R7-2 zoning district.

PREMISES AFFECTED – 21/23 Hillside Avenue, south side of Hillside Avenue, 252’-2” east of Broadway, Block 2170, Lot 110, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening and an extension of the term of the previously granted variance pursuant to Z.R. §11-411; and

WHEREAS, a public hearing was held on this application on January 24, 2006, after due notice by publication in *The City Record*, and then to decision on February 14, 2006; and

WHEREAS, Community Board No. 12, Manhattan, recommends approval of this application; and

WHEREAS, the premises is a 10,062 sq. ft. site located on the south side of Hillside Avenue, 252’-2” east of Broadway; and

WHEREAS, the site is located within an R7-2 zoning district, and is improved upon with a public parking lot (Use Group 8) for 48 vehicles; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1959, when, under Cal. No. 357-59-BZ, the Board granted an application to permit the use of the site as a public parking lot; and

WHEREAS, subsequently, the term of this grant has been extended by the Board at various times, most recently under the subject calendar number on June 27, 1995 for a term of 10 years, expiring on June 27, 2005; and

WHEREAS, pursuant to ZR §11-411, the Board may permit an extension of term for a previously granted variance; and

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WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on June 27, 1995, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 27, 2005, to expire on June 27, 2015, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received January 24, 2006’ - (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 27, 2015;

THAT the garage shall contain a maximum of 48 parking spaces;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the layout of the garage shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 1434/64)

Adopted by the Board of Standards and Appeals, February 14, 2006.

384-74-BZ

APPLICANT – Sheldon Lobel, P.C., for R. M. Property Management, Inc., owner.

SUBJECT – Application May 18, 2005 – Extension of Term of a public parking lot and an Amendment of a Variance Z.R. §72-21 to increase the number of parking spaces and to change the parking layout on site. The premise is located in an R4A zoning district.

PREMISES AFFECTED – 3120 Heath Avenue, southwest corner of Shradly Place, Block 3257, Lot 39, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to March 14, 2006, at 10 A.M., for decision, hearing closed.

1180-80-BZ

APPLICANT – SFS Associates, for One Tiffany Place

Condominium, owner.

SUBJECT – Application September 21, 2005 – Reopening for an amendment to the resolution to include superintendents’ apartment in the cellar of the existing building.

PREMISES AFFECTED – 1 Tiffany Place, Block 320, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 10 A.M., for continued hearing.

132-97-BZ

APPLICANT – Alan R. Gaines, Esq., for Deti Land, LLC, owner; Fiore Di Mare LLC, lessee.

SUBJECT – Application June 7, 2005 – Extension of Term/Amendment/Waiver for an eating and drinking establishment with no entertainment or dancing and occupancy of less than 200 patrons, UG 6 located in a C-3 (SRD) zoning district.

PREMISES AFFECTED – 227 Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island

COMMUNITY BOARD# 3SI

APPEARANCES –

For Applicant: Joseph D. Manno, Esq.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 10 A.M., for continued hearing.

43-99-BZ

APPLICANT – Windels Marx Lane and MittenDorf, LLP, for White Castle Systems, Inc., owner.

SUBJECT – Application November 22, 2005 – Extension of Term/Waiver/Amendment to a previously granted special permit for a drive-through facility accessory to an eating and drinking establishment for an additional term of five years. The amendment is to install and electronic amplification menu board. The premise is located in a C1-2 in an R-4 zoning district.

PREMISES AFFECTED – 38-02 Northern Boulevard, southwest corner formed by the intersection of Northern Boulevard, Block 1436, Lot 1, Flushing, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for adjourned hearing.

148-03-BZ

APPLICANT – Francis R. Angelino, Esq., for North West Real Estate, LLC, owner.

SUBJECT – Application August 18, 2005 – Reopening for an amendment to a previously approved five story and penthouse mixed commercial and residential building to add

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a mezzanine in the residential penthouse, located in an M1-6 zoning district.

PREMISES AFFECTED – 111/13 West 28th Street, between Sixth and Seventh Avenues, 164’-4” west of Sixth Avenue, Block 804, Lots 1101-1105 (formerly 28 and 29), Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino and David W. Sinclair.

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

145-05-BZY

APPLICANT – Krzysztof Rostek, for Belvedere III, LLC, owner.

SUBJECT – Application June 9, 2005 – Proposed extension of time to complete construction to Z.R. §11-331 for a six family house.

PREMISES AFFECTED – 135 North 9th Street, north side, 125’ from northeast corner of Berry Street, Block 2304, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Krzysztof Rostek.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to reinstate a building permit and extend the time for the completion of a new four-story building, under construction at the subject premises; and

WHEREAS, a public hearing was held on this application on December 13, 2005 after due notice by publication in *The City Record*, with continued hearings on January 24, 2005, and then to decision on February 14, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, the applicant proposes to develop the subject site with a four-story, six unit mixed-use residential/community facility building, with a medical office on the first floor; and

WHEREAS, the subject premises is currently located within an R6B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the proposed development complies with the former R6 zoning district bulk parameters as to floor area, height, and front yard; and

WHEREAS, however, on May 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Greenpoint-Williamsburg Rezoning, which rezoned the site to

R6B, as noted above; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with these bulk parameters, rendering it a non-complying building; and

WHEREAS, ZR § 11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, Z.R. §11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, because the proposed development contemplates a single building on one zoning lot, it meets the definition of Minor Development; and

WHEREAS, Z.R. §11-31(a) reads: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the record indicates that on March 31, 2005, a new building permit (Permit No. 301822981-01-NB, the “NB Permit”) for the proposed development was lawfully issued to the owner of the premises by the Department of Buildings; and WHEREAS, turning to the substantive findings of ZR § 11-331, the applicant initially acknowledged that excavation has not been fully completed as of the Enactment Date; and

WHEREAS, the applicant claimed that the front of the site had not been excavated due to a need for access to the site, and for delivery of materials and heavy equipment; and

WHEREAS, the Board expressed concern about this fact,

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noting that the plain language of ZR 11-331 requires that excavation be completed as of the Enactment Date; and WHEREAS, accordingly, the Board asked the applicant for further explanation as to why excavation had not been fully completed; and

WHEREAS, in response, the applicant submitted a statement from the project contractor, which notes that the excavation for the design construction of the project was entirely complete as of May 4, 2005, aside from excavation of the front of the site, which was where the entrance to the proposed basement was to be located; and

WHEREAS, the contractor also states that prior to the commencement of excavation, the site was full of debris and rubble from the prior building's, and the removal of this debris and the rubble was required; and

WHEREAS, the contractor states that after this occurred, the site was excavated fully for purposes of foundation construction, but the site was later backfilled as per instruction from DOB; and

WHEREAS, additionally, the project engineer states that no further excavation is required for structural or foundation elements; the only excavation that remains is backfill removal, and some soil removal for a footing for the staircase and front wall; and

WHEREAS, the applicant represents that should the NB Permit be reinstated, the developer would first proceed to finish the front foundation work for the staircase and front wall, and then proceed to remove the backfill in anticipation of basement construction; and

WHEREAS, the applicant further represents that all of this site-clearing, excavation, and backfill work occurred prior to the Enactment Date; and

WHEREAS, the Board accepts this explanation, and agrees that excavation was actually completed by the developer prior to the Enactment Date, aside from that portion of the excavation that was necessary to delay in order to provide site access for workers and equipment; and

WHEREAS, accordingly, the Board finds that the excavation requirement has been met; and

WHEREAS, the applicant represents that substantial progress had been made on foundations by the Enactment Date; and

WHEREAS, specifically, the applicant states that foundation work commenced on April 5, 2005, and, as of the Enactment Date, approximately 61 percent of the perimeter foundation walls and footings had been installed, and all of the soldier piles had been driven into the ground and concreted; and

WHEREAS, the applicant represents that 106 cubic yards of concrete were poured in furtherance of this construction, and that only 65 cubic yards are required to complete the foundation; and

WHEREAS, in support of the contention that concrete for the footings and walls was poured, the applicant has submitted a receipt from a concrete batching company that reflects that the concrete was delivered to the site prior to the Enactment Date; and

WHEREAS, as noted above, the applicant represents that the only remaining portion of the foundation to be completed is at the front, for the staircase and front wall; and

WHEREAS, in terms of time, the applicant represents that only eight days of foundation construction remain, out of a projected 31 total days; and

WHEREAS, the applicant represents that work on the foundation construction and excavation was stopped by DOB on May 5, 2005, but the stop work order was lifted in May 11, 2005; the above mentioned time calculation does not include these days; and

WHEREAS, in support of the claim that substantial progress had been made on foundations as of the Enactment Date, the applicant has submitted, among other items, photographs, and a foundation plan indicating the amount of foundation work that was completed as of the Enactment Date; and

WHEREAS, the applicant has also submitted an affidavit from the general contractor documenting the work completed on the proposed development as of the Enactment Date; and

WHEREAS, the Board has reviewed the affidavit and other evidence submitted, and agrees with the conclusion that excavation was complete and that substantial progress was made on the foundations as of the Enactment Date; and

WHEREAS, the Board finds all of above-mentioned submitted evidence sufficient and credible; and

WHEREAS, thus, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that excavation was completed and that substantial progress was made on foundations as of the Enactment Date; therefore, the Board finds that the applicant has adequately satisfied the requirements set forth at ZR § 11-331; and

Therefore it is Resolved that this application made pursuant to ZR § 11-331, to renew NB Permit No. 301822981-01-NB, is granted, and said permit is reinstated for one term of six months, from the date of this grant, to expire on August 14, 2006.

Adopted by the Board of Standards and Appeals, February 14, 2006.

25-04-A

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for Michael Picciallo, owner.

SUBJECT – Application February 11, 2004 – Proposed construction of a one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED – 506 Bradford Avenue, south side, 148' south of Drumgoole Road, Block 6946, Lot 36, Borough

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of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES -

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February
28, 2006, at 10 A.M., for decision, hearing closed.

26-04-A

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for
Michael Picciallo, owner.

SUBJECT - Application February 11, 2004 - Proposed
construction of a one family dwelling, located within the bed
of a mapped street, is contrary to Section 35, Article 3 of the
General City Law.

PREMISES AFFECTED - 510 Bradford Avenue, south side,
108' south of Drumgoole Road, Block 6946, Lot 38, Borough
of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES -

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February
28, 2006, at 10 A.M., for decision, hearing closed.

231-04-A

APPLICANT - Joseph P. Morsellino, Esq., for Chri
Babatsikos and Andrew Babatsikos, owners.

SUBJECT - Application June 17, 2004 - Proposed one
family dwelling, located within the bed of a mapped street, is
contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 240-79 Depew Avenue, corner of
243rd Street, Block 8103, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES -

For Applicant: Joseph Morsellino.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to March 7,
2006, at 10 A.M., for decision, hearing closed.

173-05-A

APPLICANT - Stuart Klein for Trevor Fray, owner.

SUBJECT - Application July 28, 2005 - An appeal seeking a
determination that the owner of said premises has acquired a
common-law vested right to continue development
commenced under the prior R5 zoning district. Current

Zoning District is R4A.

PREMISES AFFECTED - 85-24 168th Place, west side of
168th Place, 200 feet south of the corner formed by the
intersection of 18th Place and Gothic Drive. Block 9851, Lot
47, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES -

For Applicant: Christopher Slowik.

ACTION OF THE BOARD - Laid over to March
14, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: 10:40 A.M.

REGULAR MEETING

TUESDAY AFTERNOON, FEBRUARY 14, 2006

1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

361-04-BZ

CEQR #05-BSA-061Q

APPLICANT - Eric Palatnik, P.C. for Parsons Estates, LLC,
owners.

SUBJECT - Application November 17, 2004 - under Z.R.
§72-21 - to permit a proposed three-story residential building
in an R4 district which does not comply with the zoning
requirements for floor area, wall height, sky exposure plane,
open space, lot coverage and the number of dwelling units;
contrary to Z.R. §23-141c, 23-631 and 23-22.

PREMISES AFFECTED - 75-48 Parsons Boulevard, 168.40'
north of 75th road, at the intersection of 76th Avenue; Block
6810, Lot 44, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES -

For Applicant: Eric Palatnik.

ACTION OF THE BOARD - Application denied.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Queens Borough
Commissioner, dated October 29, 2004, acting on
Department of Buildings Application No. 401990770, reads,
in pertinent part:

“1) Proposed floor area is contrary to ZR 23-141c.

2) Proposed wall height is contrary to ZR 23-631.

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- 3) Proposed sky exposure plane is contrary to ZR 23-631.
- 4) Proposed open space is contrary to 23-141c.
- 5) Proposed lot coverage is contrary to 23-141c.
- 6) Number of dwelling units is contrary to 23-22.”; and

WHEREAS, this is an application made under Z.R. § 72-21 to permit, on a site within an R4 zoning district, the construction of a three-story residential building, which does not comply with applicable zoning provisions concerning Floor Area Ratio (FAR), wall height, sky exposure plane, open space, lot coverage, and number of dwelling units, contrary to ZR §§ 23-141(c), 23-631, and 23-22; and

WHEREAS, a public hearing was held on this application on August 16, 2005 after due publication in *The City Record*, with continued hearings on October 18, 2005, November 15, 2005, January 10, 2006, and then to decision on February 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board No. 8, Queens, by a vote of 18 in favor, and 16 opposed, recommends approval of this application; and

WHEREAS, the Queens Borough President also recommends approval of this application; and

WHEREAS, the subject premises is a vacant lot located on the west side of Parsons Boulevard, 168 ft. north of 76th Road, and has a total lot area of 16,512 sq ft.; and

WHEREAS, the lot is approximately 80 ft. wide and varies in depth from approximately 189 ft. to 232 ft.; and

WHEREAS, the proposed development is a three story residential building, which would be non-complying in the following respects: (1) 20 dwelling units – only 14 are permitted; (2) a FAR of 1.33 – 0.75 is the maximum permitted; (3) an Open Space Ratio of 0.47 – 0.55 is the minimum required; (4) lot coverage of 0.53 – 0.45 is the maximum permitted; (5) a wall height of 30 ft. – 25 ft. is the maximum permitted; and (6) a 90 degree sky exposure plane – an 80 degree sky exposure plane is the minimum required; and

WHEREAS, the applicant represents that the proposed development was designed to be in substantial compliance with the Predominantly Built Up Area (PBA) provisions that formerly applied to the site, as set forth at ZR 23-141(c); and

WHEREAS, Z.R. § 12-10 defines a PBA, in part, as a block entirely within an R4 or R5 zoning district, which can be no larger than four acres; and

WHEREAS, the PBA provisions allow for a greater FAR than permitted otherwise; specifically, a FAR of 1.35 is allowed for a PBA in an R4 zoning district, as opposed to a FAR of 0.75 on a block that does not meet the PBA definition; and

WHEREAS, the Board observes, and the applicant concedes, that the PBA regulations no longer apply to the site, because of a 1989 de-mapping action related to 76th Avenue which increased the size of the block to greater than

four acres; and

WHEREAS, the applicant alleges that the following are unique physical conditions that lead to practical difficulties in developing the subject site in strict compliance with underlying district regulations: (1) the site, up until the de-mapping action over 16 years ago, qualified for the bulk permitted under the PBA regulations; (2) the site is irregular in terms of its depth to width ratio; (3) the site is adjacent to a school, and is located near developments that contain a bulk greater than permitted, as well as near an intersection with a traffic signal; and

WHEREAS, for reasons set forth below, the Board does not agree that these alleged unique physical conditions create any practical difficulties in developing the site with a fully complying building, either standing alone or when considered in the aggregate; and

WHEREAS, at the outset, however, the Board notes that the applicant argues that because the proposed variances are area/bulk variances, and not use variances, a lesser standard of proof should be applied by the Board is assessing whether any practical difficulties exist on the site; and

WHEREAS, in support of this argument, the applicant cites to the recent decision *Pantelidis v. Board of Standards and Appeals*, 1/18/2006 NYLJ 19, (col. 1), 2005 WL 3722913, 2005 N.Y. Slip Op. (N.Y. Sup., Dec 23, 2005); and

WHEREAS, the applicant states that *Pantelidis* confirms that a lesser burden of proof for area variances (practical difficulties) versus use variances (unnecessary hardship) may be accepted by the Board; and

WHEREAS, while the Board has reviewed this Supreme Court level decision, it is aware that many appellate court decisions have clearly established that an application for a variance, whether bulk or use, must contain substantial evidence in support of each and every finding of ZR 72-21; and

WHEREAS, specifically, the Board cites to *Russo v. Board of Estimate of City of New York*, 84 A.D.2d 842, 444 N.Y.S.2d 175 (N.Y.A.D., 1981), *Galín v. Board of Estimate of City of New York*, 72 A.D.2d 114, 423 N.Y.S.2d 932 (N.Y.A.D., 1980), and *Feit v. Bennett*, 168 A.D.2d 495, 562 N.Y.S.2d 737, (N.Y.A.D., 1990); and

WHEREAS, thus, an applicant must still establish that the cited unique physical conditions cause the alleged practical difficulties in complying with the applicable bulk or density regulations; and

WHEREAS, in other words, some nexus between the alleged physical condition and the rationale for a particular variance must be proven; and

WHEREAS, merely showing how a lot differs from others without showing why such differences create practical difficulties is not sufficient; and

WHEREAS, additionally, some proof of practical difficulties must be submitted by the applicant: a lesser burden is not the equivalent of an absence of burden; and

WHEREAS, as to the first alleged unique condition, the applicant states that the de-mapping action in 1989, because it added area to the block that was formally designated as a street, rendered the subject block too large to fall within the

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PBA definition and

WHEREAS, the Board observes that the de-mapping is not an actual unique physical condition that, in of itself, causes hardship; and

WHEREAS, the Board agrees that it has recognized unusual block history as a factor that may militate in favor of a finding that the site is distinguishable from others in the area; and

WHEREAS, notwithstanding this recognition, the Board still requires proof of actual unique physical features present at the site which cause practical difficulties; and

WHEREAS, the applicant cites to a variance granted by the Board under Cal. No. 105-03-BZ in support of the argument that the Board has accepted a site's prior entitlement to the bulk bonus in the PBA regulations as a unique physical condition that leads to practical difficulty; and

WHEREAS, however, a careful reading of this resolution reveals that the applicant's reliance on this particular grant is misplaced; and

WHEREAS, specifically, in the ninth recital, which is the operative recital where the Board specifically finds that the hardship requirement set forth at ZR 72-21(a) has been met, the Board cites to the specific unique physical conditions that were credited; these conditions were the site's shape, its location across from a non-conforming commercial use, and its location adjacent to three-family dwellings; and

WHEREAS, no mention is made of the inapplicability of the PBA regulations to the site in this operative recital; and

WHEREAS, the Board does credit the "unique history of the block" as a basis for uniqueness in the resolution under Cal. No. 222-03-BZ; and

WHEREAS, the Board notes the history of the block in Cal. No. 222-03-BZ is comparable to the history of the block in the instant case, in that a de-mapping action led to the block exceeding the maximum acreage requirement in the PBA definition such that no bulk increase was available; and

WHEREAS, however, in 222-03-BZ, the Board also cited to the significant slope conditions present at the site; these conditions alone were the actual hardship in this case; and

WHEREAS, accordingly, in alignment with its past decisions, the Board finds that an inability to use the PBA bulk bonus due to an alleged unique block history, is, in of itself, insufficient to sustain the uniqueness finding; and

WHEREAS, instead, the Board must be presented with proof of an actual unique physical condition that leads to premium construction costs or significant revenue inhibition, which in turn requires some relief; and

WHEREAS, thus, the applicant here must establish that the alleged site conditions compromise complying development, irrespective of any unusual block history or former ability to use the PBA bulk regulations; and

WHEREAS, as to the second cited basis of uniqueness, the applicant states that the irregular shape of the site leads to a development that possesses a "long" and "squat" floor plate, which accommodates only 14 dwelling units using the available FAR in a two-story configuration; and

WHEREAS, however, the Board observes that 14 dwelling units are permitted in the subject R4 zoning district, which means that even if one assumes that the floor plates are not optimum, the shape of the lot clearly does not inhibit a development with a complying amount of units or a complying amount of FAR; and

WHEREAS, a variance can not be sustained on the basis of generally applicable zoning regulations such as the FAR and density requirements in the subject R4 district; and

WHEREAS, here, the applicant concedes that the lot shape does not prevent a complying building from being constructed; and

WHEREAS, confronted with this reality, the applicant makes the supplemental argument that a complying development would result in a building with most of the units at the ground floor, which the applicant states is the "most undesirable location" for dwelling units; and

WHEREAS, the applicant states that the diminished revenue from the ground floor units compromises the viability of a complying development; and

WHEREAS, the applicant attempted to support this statement through the provision of financial analyses, which, as discussed in detail below, the Board declines to credit; and

WHEREAS, however, even if the Board found these analyses sound, the Board disagrees with the underlying premise that the lot shape imposes a greater hardship on complying development than a lot with a more regular shape, as to the location of the units within the building; and

WHEREAS, the Board first observes that the lot is reasonably wide and very deep, such that it does not impose any site planning constraints that inhibit construction of a complying development; and

WHEREAS, the Board also observes that the irregular shape results from the varying depth of the site to the rear lot line, and that the actual lot area of the irregularity is around 1,400 sq. ft.; that is, the lot's depth is regular except for small portion at the rear; and

WHEREAS, if this portion is ignored, then the developable portion of the site is 80 ft. wide by 189 ft. deep along both side lots line, which is a large rectangle without any apparent hardship; and

WHEREAS, a two-story development constructed within this rectangle with the complying density and FAR would still result in many of the units being placed on the ground floor, due to the perimeter wall height limitation in the R4 district at 25 ft.; and

WHEREAS, thus, there is nothing about the lot shape that results in practical difficulties as to the location of the units within the building; rather, as noted above, it is still a function of the generally applicable zoning parameters of the district, which is not an acceptable basis for hardship; and

WHEREAS, the applicant made the additional argument that a two-story complying development is not in keeping with the character of the larger residential developments nearby, but the Board does not find this to be a relevant consideration, because there is no character finding that must be met to proceed with as of right development; and

WHEREAS, even though the Board disagrees that the

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shape of the lot creates practical difficulties in developing the site with a two-story complying building, the Board suggested to the applicant at hearing that a three-story complying building could be developed on the site, since the R4 district permits a total building height of 35 ft.; and

WHEREAS, assuming *arguendo* that a two-story building results in a hardship because more units have to be placed on the ground floor, a three-story building would alleviate this hardship; and

WHEREAS, the applicant's own three-story proposal is an implicit acknowledgement of this fact; and

WHEREAS, however, upon submission of plans for a complying three-story development that provided 12 units, with eight of the units on the second or third floors, the applicant argued that such plans reflected a building design that is "aesthetically unappealing", due to the application of the R4 sky exposure plane requirements; and

WHEREAS, the applicant also argues that such a building can not realize a reasonable return because 33 percent of the units are at the ground floor; and

WHEREAS, while the applicant contends that the design of the complying three-story building is unappealing, no evidence to support this statement has been provided, nor has any argument been made as to how this would impact the viability of such a building; and

WHEREAS, further, leaving aside whether the three-story building is in fact unattractive in terms of design, the Board rejects this argument as irrelevant, because no explanation has been provided as to how the shape of the site constrains the building design such that only an unattractive building can be developed on the site; and

WHEREAS, as noted above, the developable portion of the site is large enough to accommodate a building that complies with the as of right bulk and density parameters, and there is nothing that prevents a well-designed building from being constructed; and

WHEREAS, the Board also rejects the argument that a three-story complying building can not realize a reasonable return because 33 percent of the units will be on the ground floor; and

WHEREAS, again, the Board observes that the applicant has failed to explain how the site's shape creates the alleged problem of 33 percent of the units being located on the ground floor; and

WHEREAS, if the site were a perfect rectangle, 33 percent of the units would still be located on the ground floor of a complying three-story building; and

WHEREAS, finally, the Board observes that all residential buildings that contain units on the ground floor gain less revenue from such units; and

WHEREAS, this condition is thus common to all residential development and has no specific relationship to the shape of the lot; and

WHEREAS, the Board also rejects the applicant's third alleged basis of uniqueness, namely, that the site suffers a hardship because of its proximity to over-bulk buildings, an intersection, and community facility uses; and

WHEREAS, the applicant states that the site is situated

immediately adjacent to developments that were built to an FAR that is significantly greater than permitted in the subject R4 zoning district; and

WHEREAS, the applicant alleges that these structures "dwarf" the site; and

WHEREAS, the Board finds this claim spurious, since the site is actually adjacent to a vacant lot on one side and a two-story school on the other; and

WHEREAS, while there is a large scale residential development to the rear of the site that was built in excess of the permitted R4 district bulk through approval from the City Planning Commission, with nine and 13 story buildings, given the site's frontage on Parsons Boulevard and the lower scale on either side of the site, there is no basis for the claim that site is "dwarfed" or otherwise negatively impacted by this development; and

WHEREAS, the Board also notes that the irregularity of the depth of the site that the applicant claims as hardship actually acts as a buffer between any development on the site and the buildings to the rear, in that it affords an average rear yard depth of approximately 92 ft., which well exceeds the required rear yard depth of 30 ft.; and

WHEREAS, the Board also observes that due to the significant depth of the site, a complying building could easily be set back from the front lot line, which would mitigate any impact that proximity to the intersection might have; and

WHEREAS, the Board further notes that the applicant's proposed variance building is only 5 ft. higher than a complying three-story building, which is not so significant of an increase that one could conclude that any negative effect that the buildings to the rear had on the site would be mitigated; this further weakens the rationale of the applicant's contention; and

WHEREAS, the applicant also states that the adjacency of the site to a school further inhibits complying residential development; and

WHEREAS, again, the Board disagrees, and notes that schools are community facility uses that are presumed by the Zoning Resolution to not create an objectionable influence on residence districts; and

WHEREAS, as with the PBA regulations, the applicant cites to the Board's grant under Cal No. 105-03-BZ, for the proposition that the Board has, in the past, credited a site's locational difficulties as a contributing factor towards practical difficulties; and

WHEREAS, however, in that case, unlike here, the Board found that the site actually suffered a hardship from its irregular shape; and

WHEREAS, moreover, the Board also cited to a commercial use across from the site, which is often not compatible with proposed residential uses, unlike the adjacent residential and community facility uses here; and

WHEREAS, the Board further notes that the site that the Board considered under 105-03-BZ was a 20 ft. wide by approximately 100 ft. deep lot, which is much smaller than the subject site; development could not be repositioned within the site and still comply with applicable yard regulations to

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avoid the negative impacts of the adjacent uses, unlike here; and

WHEREAS, finally, the Board notes that it recently rejected the argument that proximity to an intersection could serve as the basis of hardship, under Cal. No. 118-03-BZ; and

WHEREAS, specifically, the Board rejected the argument of the applicant in 118-03-BZ that the location of the premises on an allegedly busy commercial intersection constituted a unique physical conditions; and

WHEREAS, the Board noted that this applicant had failed to prove that the intersection was any more busy than numerous others within the neighborhood, and that expanding the definition of uniqueness to include location of a lot at a busy intersection in a city with innumerable busy intersections is contrary to the definition of what is unique; and

WHEREAS, the Board rejects the instant applicant's argument as to the impact of the proximity of the subject site to the intersection for the same reasons; and

WHEREAS, for all of the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at Z.R. § 72-21(a); and

WHEREAS, because the applicant has failed to provide substantial evidence in support of the finding set forth at Z.R. §72-21(a), the application also fails to meet the finding set forth at Z.R. §72-21(b); and

WHEREAS, however, even if the Board assumed that any of claimed bases of uniqueness were legitimate, the Board observed numerous deficiencies in the submitted financial analyses; and

WHEREAS, specifically, the Board has concerns regarding: (1) the claimed site valuation; (2) certain assumptions made in the sell-out value per square foot, per floor; and (3) the claimed price differential between the first and upper floors; and

WHEREAS, the Board notes that the site value was initially estimated by the applicant at \$1,650,000 (or \$100.00 per sq. ft.), but was not credibly established by the site comparables; and

WHEREAS, specifically, the Board notes that of the six comparable sites presented, five are considerably smaller (ranging in size from 1,470 sq. ft. to 6,262 sq. ft., versus the subject site's 16,512 sq. ft.; the Board does not consider these sites truly comparable; and

WHEREAS, moreover, one comparable site is 161,000 sq. ft, which is about ten times the size of the subject lot and is likewise not really comparable; and

WHEREAS, the Board also observes that a lack of true comparability also plagues the sites chosen by the applicant to establish the residential sales amounts for the proposed development, which was presented to the Board as \$327 per sq. ft.; and

WHEREAS, the Board further notes that operating expenses for the as-of-right scheme appear high at 42% of effective income, which depresses the return; and

WHEREAS, the ratio of expenses to effective income that the Board typically sees for new construction is closer to 30 to 35 percent especially considering the any construction

on the site is new; and .

WHEREAS, as to the difference in sell-out price between the ground floor units and upper floor units, the applicant approximates such difference at 25 percent; and

WHEREAS, however, as conceded by the applicant, the data used to support this alleged differential is from 1988 to 2003, which the Board finds to be out of date; and

WHEREAS, more troubling is the fact that if the second floor sell-out value (\$375) is ascribed to the ground floor units in a complying FAR scheme, the additional revenue would not provide a reasonable return; and

WHEREAS, this suggests that other variables in the analysis, such as site valuation or operating expenses, need adjusting, as discussed above, and that the site suffers no actual hardship, but, like all sites in the area, is in a zoning district that provides arguably inadequate FAR, based upon the market costs of land and construction; and

WHEREAS, the Board notes that a variance may not be predicated on a combination of market conditions and existing zoning, as this effect is common to all sites within a particular zoning district; the appropriate course of action in such an instance is to obtain a rezoning through the City Planning Commission; and

WHEREAS, in sum, the Board was not persuaded by the financial information presented by the applicant, and asked for, but did not receive, cogent refinements to the initial study; and

WHEREAS, thus, for all of the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at Z.R. § 72-21(b); and

WHEREAS, since the application fails to meet the findings set forth at Z.R. § 72-21 (a) and (b), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at Z.R. § 72-21(a) and (b), which are threshold findings that must be met for a grant of a variance, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 29, 2004, acting on Department of Buildings Application No. 401990770, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, February 14, 2006.

386-04-BZ CEQR #05-BSA-069Q

APPLICANT – Rothkrug, Rothkrug, Weinberg & Spector, for PSCH, Inc., owner.

SUBJECT – Application November 9, 2004 – under Z.R. §72-21 to permit the proposed enlargement and development of an existing community facility, located in M1-1 zoning district, which does not comply with the zoning requirements for accessory off-street loading berth, waterfront yards, total height and parking, is contrary to Z.R. §44-52, §62-331, §62-34, §62-441 and §44-21.

PREMISES AFFECTED – 22-44 119th Street, corner of 23rd

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Avenue, Block 4194, Lot 20, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 9, 2005, acting on Department of Buildings Application No. 401963586, reads, in pertinent part:

“Proposed reduction in required accessory parking, for Use Group 6 (B-1 parking use) in an M1-1 zoning district requires a special permit from the [BSA], pursuant to Section 73-44 ZR.”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within an M1-1 zoning district, a reduction in the required number of accessory parking spaces for an existing not-for-profit office use from 88 to 44, contrary to Z.R. § 44-21; and

WHEREAS, the Board notes that the subject application was initially filed as a variance under ZR § 72-21; said application asked for waivers as to height, yards, and loading berths in addition to the parking waiver; and

WHEREAS, after accepting direction from the Board staff as to the availability of the height and yard waivers through an application at the City Planning Commission and agreeing to the provision of a loading berth, the applicant revised the application; and

WHEREAS, a public hearing was held on this application on November 15, 2005, after due notice by publication in *The City Record*, with a continued hearing on January 10, 2006, and then to decision on February 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Commissioner Chin; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the subject site is located at the northwest corner of the intersection of 23rd Avenue and 119th Street, and has a lot area of 43,832 sq. ft. (approximately 3,400 of this lot area is underwater, as the site abuts Flushing Bay); and

WHEREAS, the site is currently occupied by a 11,016 sq. ft. one-story plus mezzanine building, with 30 non-required accessory parking spaces; and

WHEREAS, the building is currently owned and occupied by a not-for-profit organization for Use Group 6 office purposes; the not-for-profit currently employs 140 people; and

WHEREAS, the applicant represents that the site is proposed to be developed with a four-story, 25,324 sq. ft.

expansion to the existing building, which would necessitate 88 required accessory parking spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject M1-1 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for Use Group 6 uses in the B1 parking category; for the M1-1 zoning district and the subject UG 6 use, the Board may reduce the required parking from 1 space per 600 sq. ft. of floor area to 1 space per 300 sq. ft. of floor area; and

WHEREAS, the applicant represents that assuming a special permit is obtained, the site will be developed with a 59 space accessory parking lot; the parking will be attended; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the proposed UG 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant has submitted sufficient evidence of the good faith of the not-for-profit in pursuing the proposed UG 6 office use; in particular, the Board observes that the not-for-profit currently occupies the site and the building proposed to be enlarged, and that the applicant has submitted documentation as to the need for a larger office and training space based upon the program of the not-for-profit; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board expressed concern about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response to the Board’s concerns regarding parking, the applicant prepared a person, vehicular trip and parking accumulation analysis based upon a transportation survey for the existing office use; and ; and

WHEREAS, the analysis revealed that the proposed development would generate a total of 103 person trips and 55 vehicle trips during both the AM (8AM to 9AM) and PM (5PM to 6PM) peak hours; and

WHEREAS, the analysis also revealed that ten additional spaces would be required on-site to accommodate the increased trip generation; and

WHEREAS, the applicant concludes that since the proposal is to increase the amount of spaces to 59, any increased demand can be accommodated on-site; and

WHEREAS, based upon this study, the Board agrees that the accessory parking space needs of the not-for-profit will be addressed even with the parking reduction; and

WHEREAS, the Board also expressed concern about the proposed layout of the accessory parking lot, and suggested that the layout be approved by DOB subsequent to the Board grant; and

WHEREAS, the applicant agreed to this suggestion, and placed a note on the site plan indicating the gross calculations for the proposed accessory parking and the accessory loading berth; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the

MINUTES

proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to Z.R. §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA069Q dated July 26, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-44 and 73-03, to permit, within an M1-1 zoning district, a reduction in the required number of accessory parking spaces an existing not-for-profit office use from 88 to 44 to, contrary to Z.R. § 44-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received February 10, 2006–(1) sheet and *on further condition*:

THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;

THAT a minimum of 44 and a maximum of 59 attended parking spaces shall be provided in the accessory parking lot;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the layout and design of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning

Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 14, 2006.

94-05-BZ

APPLICANT – Eric Palatnik, P.C., for Abraham Bergman, owner.

SUBJECT – Application April 20, 2005 – under Special Permit ZR §73-622 to permit the enlargement of a single family residence to vary ZR sections 23-141 for the increase in floor area and open space, 23-461 for less than the required side yards and 23-47 for less than the required rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1283 East 29th Street, East 29th Street, north of Avenue M, Block 7647, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Chin and Commissioner Collins.....3

Negative: Vice-Chair Babbar.....1

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 8, 2005, acting on Department of Buildings Application No. 301909585, reads, in pertinent part:

- “1. Proposed Floor Area Ratio is contrary to ZR 23-141.
 2. Proposed rear yard is contrary to ZR 23-47.
 3. Proposed open space is contrary to ZR 23-141.
 4. Proposed side yard is contrary to ZR 23-461”;
- and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, rear yard, and side yards, contrary to Z.R. §§ 23-141, 23-47 and 23-461; and

WHEREAS, a public hearing was held on this application on November 22, 2005, after due notice by publication in *The City Record*, with continued hearings on January 24, 2006 and then to decision on February 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on East 29th Street, north of Avenue M; and

MINUTES

WHEREAS, the subject lot has a total lot area of 2,800 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,392 sq. ft. (0.49 FAR) to 2,800 sq. ft. (1.01 FAR); the maximum floor area permitted is 1,400 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 145% to 119%; 150% is the minimum required; and

WHEREAS, the proposed enlargement will extend the currently non-complying side yard of 1'-6"; a minimum side yard of 5 ft. is required; and

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the proposed enlargement will result in a rear yard of 24'-10"; a rear yard of 30'-0" is required; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20 feet of the rear lot line; and

WHEREAS, at hearing, the Board asked the applicant to explain whether the proposed enlarged home would comply with any applicable perimeter wall heights requirements; and

WHERE, the applicant clarified that because the home is within an R2 zoning district, it is not subject to a perimeter wall height requirement, but is subject to a street wall height requirement, with which it complies; and

WHEREAS, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, lot coverage, and side yards, contrary to Z.R. §§ 23-141, 23-47 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed

with this application and marked "Received January 31, 2006"--(8) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the total FAR on the premises shall not exceed 1.01;

THAT the maximum floor area in the attic shall be 681.2 sq. ft.;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT any porch, shed or garage shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 14, 2006.

195-05-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Steven Wemreb and Raizy Weinreb, owner.

SUBJECT – Application August 17, 2005 - Pursuant to ZR §73-622 for the enlargement of an existing one family residence which creates non compliances with respect to floor area, lot coverage and open space as per ZR 23-141 and less than the minimum required side yard as per ZR 23-48. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 2906 Quentin Road, Quentin Road between East 29th Street and Nostrand Avenue, Block 6812, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION -

MINUTES

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 28, 2005, acting on Department of Buildings Application No. 301968967, reads, in pertinent part:

“Proposed enlargement . . .

1. Creates non-compliance with respect to Floor Area by exceeding the allowable Floor Area Ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the lot coverage . . . and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-48 of the Zoning Resolution. 10'-0" total; 5'-0" min.”; and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-48; and

WHEREAS, a public hearing was held on this application on January 31, 2006, after due notice by publication in *The City Record*, and then to decision on February 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on Quentin Road between East 29th Street and Nostrand Avenue, approximately 33 ft. east of East 29th Street; and

WHEREAS, the subject lot has a total lot area of 2,500 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,709 sq. ft. (0.68 FAR) to 2,530 sq. ft. (1.01 FAR); the maximum floor area permitted is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage to 47 percent; 35 percent is the maximum permitted; and

WHEREAS, the proposed enlargement will extend the currently non-complying side yard of 1'-6"; a minimum side yard of 5 ft. is required; and

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 18, 2005”-(1) sheet, “February 7, 2006”-(6) sheets and “February 14, 2006”-1 sheet ; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the total FAR on the premises shall not exceed 1.01;

THAT the maximum floor area in the attic shall be 161 sq. ft.;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT any porch, shed or garage shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 14, 2006.

196-05-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Leon Kamkhatchi and Pnina Fani Kamkhatchi, owner.

SUBJECT – Application August 17, 2005 – ZR §73-622 for the enlargement of an existing one family residence which creates non compliances with respect to floor area, lot coverage and open space as per ZR §23-141 and less than the minimum required side yard as per ZR §23-48. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 2315 Quentin Road, Quentin

MINUTES

Road between East 23rd Street and East 24th Street, Block 6786, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 19, 2005, acting on Department of Buildings Application No. 301969671, reads, in pertinent part:

“Proposed enlargement . . .

1. Creates non-compliance with respect to Floor Area by exceeding the allowable Floor Area Ratio and is contrary to Section 23-141 of the Zoning Resolution
2. Creates non-compliance with respect to the lot coverage and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yard by not meeting the minimum requirement of Section 23-461 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on January 31, 2006, after due notice by publication in *The City Record*, and then to decision on February 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on Quentin Road between East 23rd and East 24th Streets, approximately 52 ft. west of East 24th Street; and

WHEREAS, the subject lot has a total lot area of 2,800 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1563 sq. ft. (0.56 FAR) to 2541 sq. ft. (0.91 FAR); the maximum floor area permitted is 1,400 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage to 50 percent; 35 percent is the maximum permitted; and

WHEREAS, the proposed enlargement will extend the currently non-complying side yard of 3 ft.; a minimum side yard of 5 ft. is required; and

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received August 17, 2005”-2 sheets and “November 18, 2005”- (5) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the total FAR on the premises shall not exceed 0.91;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 14, 2006.

269-04-BZ

APPLICANT – Law Office of Howard Goldman, LLC, for 37

MINUTES

Bridge Street Realty, Corp., owner.

SUBJECT – Application August 2, 2004 – under Z.R. §72-21 to permit the conversion of a partially vacant, seven-story industrial building located in a M1-2 and M3-1 zoning district into a 60 unit loft style residential dwelling in the Vinegar Hill/DUMBO section of Brooklyn.

PREMISES AFFECTED - 37 Bridge Street, between Water and Plymouth Streets, Block 32, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February 28, 2006, at 1:30 P.M., for decision, hearing closed.

89-05-BZ

APPLICANT – Stadtmauer Bailkin, LLP (Steven M. Sinacori, Esq.) for 18 Heyward Realty, Inc., owner.

SUBJECT – Application April 12, 2005 - under Z.R. §72-21 to allow an enlargement of the rear portion of an existing five-story community facility/commercial building; site is located in an R6 district; contrary to ZR §24-11, 24-37 and 24-33.

PREMISES AFFECTED – 18 Heyward Street, Heyward Street, between Bedford and Wythe Avenues, Block 2230, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Richard Bowers, Jack Freeman and Robert Scrano Jr.

For Opposition: Kenneth Fisher.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

329-05-BZ

APPLICANT – Wireless EDGE Consultants, LLC, for NYC Health and Hospital Corporation, owner.

SUBJECT – Application November 15, 2005 – Under Z.R. §73-30 – Proposed Multiple Carrier Monopole is contrary to Z.R. §22-00 and therefore not allowable within the R3-2 district (Special Natural Area – NA1).

PREMISES AFFECTED – 460 Brielle Avenue, between Brielle Avenue and Rockland Avenue, Block 955, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: John Arthur.

For Opposition: Grace Rindsberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to February

28, 2006, at 1:30 P.M., for decision, hearing closed.

339-05-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, Inc., owner.

SUBJECT – Application November 25, 2005 – Under Z.R. §72-21 – To permit the proposed construction of a Yeshiva and is contrary to Z.R. Sections 33-121 (floor area) and 33-441 (front setbacks).

PREMISES AFFECTED – 3574 Nostrand Avenue, south side of Nostrand Avenue, north of Avenue W, Block 7386, Lot 131, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Rabbi Shmiel Devtsch, Ephraim Merenbem, Feyie Hallusdan, David Carlebach, Michael Deutsch and Ariva Ziegler.

For Opposition: Howard B. Weber, Mark Schilps and Arlene Reiman.

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 3:20 P.M.

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DIRECTORY

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SATISH BABBAR, *Vice-Chair*

JAMES CHIN

CHRISTOPHER COLLINS

Commissioners

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Roy Starrin, *Deputy Director*

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26-06-BZ

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27-06-A

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28-06-BZ

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30-06-A

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31-06-BZ

102-10 159 Road, South side of 159 Road near the intersection of 102 Street and 159 Road, Block 14182, Lot 88, Borough of **Queens, Community Board: 10.** Under 72-21-For the legalization of an automotive collision repair shop.

32-06-BZ

5935 Broadway, East side of Broadway between 242nd Street and Manhattan College Parkway, Block 5776, Lot 632, Borough of **Bronx, Community Board: 8.** Under 72-21-To permit within an (proposed) R6/C2-3 zoning district the maintenance of an accessory group parking facility with 924 off-street parking spaces.

33-06-BZ

1457 Richmond Road, N/S Richmond Road 0' 0" from the intersection of Delaware Street, Block 869, Lot 359, Borough of **Staten Island, Community Board: 2.**

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

APRIL 11, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 11, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

360-49-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application November 14, 2005 – Pursuant to Z.R.§72-21 for an extension of term of the previously granted variance permitting the use of the site as a gasoline service station with accessory uses which expired on February 25, 2005. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 69-05 Eliot Avenue, northern corner of Eliot Avenue and 69th Street, Block 2838, Lot 38, Borough of Queens.

COMMUNITY BOARD #5Q

414-59-BZ

APPLICANT – Bryan Cave, LLP, for Royal Charter Properties, owner.

SUBJECT – Application December 8, 2005 - Extension of Term of a Variance to allow 77 transient parking spaces at the first and cellar floors of an existing multiple dwelling accessory garage. The premise is located in an R-9 and R-10 zoning district.

PREMISES AFFECTED – 1285 York Avenue, aka 435-445 East 68th Street, Block 1463, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEALS CALENDAR

92-05-A

APPLICANT – Sheldon Lobel, P.C., for Patrick & Susan Kim, owner.

SUBJECT – Application April 15, 2005 - Proposed enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law.

PREMISES AFFECTED – 43-36 Cornell Lane, westerly side of Cornell Lane, north of Northern Boulevard, Block 8129, Lot 154, Borough of Queens.

COMMUNITY BOARD #11Q

14-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Jeanine & Dan Fitzgerald, lessee.

SUBJECT – Application January 24, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting a mapped street contrary to GCL §36, Article 3.

PREMISES AFFECTED – 54 Graham Place, south side Graham Place, 158.86' west of Beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

20-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Mary Jane & Anthony Fortunato, lessee.

SUBJECT – Application February 7, 2006 – Proposed reconstruction and enlargement of a single family dwelling not fronting a mapped street contrary to GCL §36, Article 3.

Upgrade existing non-conforming private disposal system in the bed of the service road contrary to Building Department policy.

PREMISES AFFECTED – 38 Kildare Walk, west side of Kildare Walk, 92.51' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

24-06-A

APPLICANT – Alan Gaines, Esq. for Deti Land, owner , Fiore Di Mare, lessee

SUBJECT – Application January 3, 2006 - Proposed legalization of four on-site parking spaces for an eating and drinking establishment(Fiore Di Mare) located in the bed of a mapped street, is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 227 Mansion Avenue, situated on the west side of Mansion Avenue, 94' north of the corner formed by the intersection of Cleveland and Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island.

COMMUNITY BOARD #3SI

30-06-A

APPLICANT - Eric Hecker, Esq. of Emery Celli,

CALENDAR

Brinkcerhoff & Abady, LLP for Lamar Outdoor Advertising, lessee, EG Clemente Bros. owner .

SUBJECT - Application filed on February 21, 2006- For an appeal of the Department of Buildings decision dated January 19, 2006 revoking Advertising sign approvals and permits under Application Nos. 5000684324 and 500684315 in that it allows advertising signs that are not within 1/2 mile of the NYC Boundary and as such are in violation of Section 42-55 of the Zoning Resolution.

PREMISES AFFECTED – 50 South Bridge Street, between Arthur Kill Road and Page Avenue, Block 7584, Lot 122, Borough of Staten Island.

COMMUNITY BOARD #3SI

APRIL 11, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 11, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

290-02-BZ thru 314-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner. (Taipei Court)

SUBJECT – Application October 24, 2002 – Variance: Z.R. §72-21, to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district's equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners' association that will govern maintenance of

the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-01/03/05/07/09/11/13/17/19/15/21/21/23/25/27/29/31/33/35/20/22/24/26/28/30/32/34 Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

374-03-BZ thru 376-03-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner.

SUBJECT – Application December 2, 2003 – Variance: Z.R. §72-21, to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district's equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners' association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-17/19/36-A Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

249-04-BZ

APPLICANT – Harold Weinberg, PE for Prince Parkside LLP, owner.

SUBJECT – Application July 13, 2004 - Zoning Variance (bulk) pursuant to ZR §72-21 to allow an enlargement of an existing non-complying UG 2 residential building in an R7-1 district; contrary to ZR §§ 23-121, 54-31, 23-462, 25-241, 23-22.

PREMISES AFFECTED – 205 Parkside Avenue, Brooklyn; located between Ocean Avenue and Parkside Court (Block 5026, Lot 302), Borough of Brooklyn.

COMMUNITY BOARD #9BK

293-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 342 Realty, LLC, owner.

SUBJECT – Application September 29, 2005 - This application is filed pursuant to Z.R. §73-44 to request a Special Permit to allow a reduction of required parking for an as-of-right commercial building located within a C8-1 zoning district.

PREMISES AFFECTED – 8751 18th Avenue, between 18th Avenue and Bay 19th Street approximately 100 feet East of Bath Avenue, Block 6403, Lot 6, Borough of Brooklyn

CALENDAR

COMMUNITY BOARD #11BK

19-06-BZ

APPLICANT – Sheldon Lobel, P.c., for MiCasa HDFC, owner.

SUBJECT – Application January 27, 2006 – Under §72-21 to permit a proposed eight-story residential building which requires variance of Z.R. §§23-145 (floor area), 23-633 (height and setback) 25-25c (parking), 23-851(court regulations) and 23-861 (legal window), located in an R7-1 zoning district.

PREMISES AFFECTED – 745 Fox Street, entire block front of East 156th Street between Fox Street and Beck Street, Block 2707, Lot 11, Borough of The Bronx.

COMMUNITY BOARD #2BX

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, FEBRUARY 28, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, December 13, 2005, as printed in the Bulletin of December 22, 2005, Volume 90, No. 51. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

648-42-BZ

APPLICANT – Sheldon Lobel, P.C., for Abenaa Frempong, owner.

SUBJECT – Application August 11, 2005 - Pursuant to ZR §11-413 this application seeks to change the ground floor use from previously approved manufacture of ferrous and non-ferrous metal products (UG16) to music studio (UG9). The owner also seeks to construct an as-of- right two family residences on two additional floors, thereby making this a proposed three story building. The premise is located in an R-6 zoning district.

PREMISES AFFECTED – 28 Quincy Street, between Classon Avenue and Downing Street, Block 1972, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening, and a change in use pursuant to Z.R. § 11-413, from Use Group 16 warehouse to Use Group 9 music studio; and

WHEREAS, a public hearing was held on this application on January 31, 2006, after due notice by publication in *The City Record*, and then to closure and decision on February 28, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board No. 2, Brooklyn, recommends approval of the subject application; and

WHEREAS, the subject site is a 5,747 sq. ft. site located

on Quincy Street between Classon Avenue and Downing Street, and is within a R6 zoning district; and

WHEREAS, the site is currently improved upon with a one-story building, historically occupied as storage, a metal manufacturing plant, and a garage; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since 1916, when, under BSA Calendar No. 55-16-BZ, it granted an application to permit the erection of a garage; and

WHEREAS, on September 22, 1942, under the subject calendar number, the Board granted a special permit allowing the conversion of the garage to a metal manufacturing plant; and

WHEREAS, the applicant represents that the metal manufacturing use has not occupied the building for many years, and that the site was most recently used for storage purposes; and

WHEREAS, the applicant now proposes the conversion of the existing building to a Use Group 9 music studio; said studio will be used by the owner of the premises for private studio activities; and

WHEREAS, the applicant also proposes to add a two unit residential component above the first floor, which will comply with applicable R6 zoning district regulations; and

WHEREAS, the studio will be soundproofed in order to exceed the noise attenuation requirements of the Building Code; and

WHEREAS, interior modifications to the existing building are proposed to accommodate the change in use and residential addition; no structural alterations to the existing foundations or load bearing walls will be undertaken; and

WHEREAS, pursuant to ZR § 11-413, the Board may allow a change in use permitted by a pre-1961 special permit to a non-conforming use, so long as the change is one that would be permitted under the provisions of Article 5 of the Zoning Resolution; and

WHEREAS, Article 5 would permit the proposed change in use; and

WHEREAS, the Board notes that it is not approving the residential component of the proposal; compliance with R6 regulations shall be as reviewed and approved by DOB; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 11-413.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under ZR § 11-413, on a site previously before the Board, the change in use from Use Group 16 storage to Use Group 9 music studio; *on condition* that all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received February 28, 2006"-(3) sheets; and *on further condition*:

THAT the premises shall be maintained free of debris and graffiti;

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THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect, to the extent they are applicable;

THAT no signage shall be permitted on the site except for a single two ft. by three ft. sign identifying the studio by name;

THAT the residential component of the proposal shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. (301894341)

Adopted by the Board of Standards and Appeals, February 28, 2006.

7-57-BZ

APPLICANT – Ruth Peres, Esq., for Kapsin & Dallis Realty Corp., owner; Ruth Peres, lessee.

SUBJECT – Application December 15, 2005 – Pursuant to ZR §11-411 for an Extension of Term of a gasoline service station which expired on September 30, 2005. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 2317-27 Ralph Avenue – 1302-1320 East 65th Street, southeast corner of Ralph Avenue and Avenue M, Block 8364, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ruth Peres.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application made pursuant to Z.R. §11-411, for an extension of the term of the previously granted variance, permitting a gasoline station; and

WHEREAS, a public hearing was held on this application on January 31, 2006, after due notice by publication in *The City Record*, and then to decision on February 28, 2006; and

WHEREAS, Community Board No. 18, Brooklyn, recommends disapproval of this application, based upon concerns that the site was being used for commercial parking purposes and bus parking, contrary to the Board’s grant; these concerns are discussed below; and

WHEREAS, the premises is a 18,802 sq. ft. site located at the southeast corner of Ralph Avenue and Avenue M; and

WHEREAS, the site is located within an R3-2 zoning district, and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 23, 1957, when, under the subject calendar number, the Board granted an application to permit the use of the site as a gasoline service station, with accessory lubricatorium, minor repairs, car wash, store room, office, store, parking and storage of motor vehicles; and

WHEREAS, subsequently, the term of this grant has been extended by the Board at various times, most recently on February 27, 1996 under the subject calendar number for a term of 10 years, expiring on September 30, 2005; and

WHEREAS, at hearing, the Board asked the applicant to address the Community Board’s concerns regarding commercial parking; and

WHEREAS, the applicant responded that there is no commercial parking on-site, but that occasionally vans that are serviced at the gas station are stored for pick-up the next day; and

WHEREAS, the applicant stated that vehicles that are kept overnight are left in the service bays; and

WHEREAS, the applicant also stated that the certificate of occupancy for the site allows storage of vehicles, and that all such storage is for vehicles being serviced; and

WHEREAS, finally, the applicant stated that the bus referenced by the Community Board was not owned by him and did not park on his lot, but adjacent to it; and

WHEREAS, pursuant to Z.R. §11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on July 23, 1957, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from September 30, 2005, to expire on September 30, 2015, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received December 15, 2005’-(1) sheet, and ‘February 24, 2006’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on September 30, 2015;

THAT parking on site shall be for vehicles awaiting service only;

THAT any vehicles stored on-site overnight shall be parked in the service bays;

MINUTES

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT all fencing and landscaping shall be installed/maintained as per the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 1434/64)

Adopted by the Board of Standards and Appeals, February 28, 2006.

111-94-BZ

APPLICANT – Ari Goodman, Esq., for 2502 8th Avenue Corp., owner; Michael Williams, lessee.

SUBJECT – Application May 4, 2005 – Extension of term of a Special Permit for the vacant portion of a lot to be used for accessory parking for the commercial uses on the built portion of the site and as incidental monthly/overnight parking for the residential neighbors. The site is located in a C1-4/R-8 zoning district.

PREMISES AFFECTED – 3543-49 Broadway, a/k/a 601 West 145th Street, northwest corner intersection of Broadway and West 145th Street, Block 2092, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ari Goodman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of the previously granted special permit made pursuant to ZR § 73-42, which allowed an as of right retail use in a commercial district to locate its accessory parking in a residential district; and

WHEREAS, a public hearing was held on this application on January 31, 2006, after due notice by publication in *The City Record*, and then to decision on February 28, 2006; and

WHEREAS, Community Board No. 9, Manhattan, recommends approval of this application; and

WHEREAS, the premises is a 5,500 sq. ft. site located at the northwest corner of Broadway and West 145th Street, and is

located partially within an R8 zoning district and partially within an R8(C1-4) zoning district; and

WHEREAS, the parking lot is located entirely within the R8 zoning district, adjacent to a building occupied by commercial uses, located entirely within the C1-4 commercial overlay district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 4, 1995, when, under the subject calendar number, the Board granted an application pursuant to ZR § 73-42 to permit the legalization of the parking lot for accessory parking purposes to the adjacent commercial use; and

WHEREAS, subsequently, on January 27, 2005, the term of this grant was been extended by the Board, for a term of five years, expiring on April 4, 2005; and

WHEREAS, the applicant now requests a further extension of term; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on April 4, 1995, and as subsequently extended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from April 4, 2005, to expire on April 4, 2015, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received February 15, 2006”– (1) sheet; and *on further condition*:

THAT the term of this grant shall expire April 4, 2015;

THAT there shall be a maximum of 29 parking spaces;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 100494635)

Adopted by the Board of Standards and Appeals, February 28, 2006.

262-99-BZ

APPLICANT – Sheldon Lobel, P.C., for A.R.E. Group Inc., owner.

SUBJECT – Application October 12, 2005 – Application for

MINUTES

a waiver of Rules of Procedure for an extension of time to complete construction and to obtain a certificate of occupancy which expired September 12, 2004.

PREMISES AFFECTED – 230-234 East 124th Street, south side of 124th Street between Second Avenue and Third Avenue, Block 1788, Lots 35 & 37, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION–

WHEREAS, this application is a request for a re-opening and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on February 7, 2006, after due notice by publication in *The City Record*, and then to decision on February 28, 2006; and

WHEREAS, the subject 5,954 sq. ft. site is located on the south side of East 124th Street between Second and Third Avenues, and is within an R7-2 zoning district; and

WHEREAS, on September 12, 2000, the Board granted an application under the subject calendar number pursuant to ZR § 72-21, to permit the proposed legalization and enlargement of a contractor’s establishment and factory located within a three-story building at the site; and

WHEREAS, on May 14, 2002, the Board granted an amendment to the variance, to allow full lot coverage on a portion of the lot for use as an accessory parking lot, as well as an increase in the height of the building; and

WHEREAS, the applicant represents that no construction was commenced after the 2000 grant due to delays related to an inability to find an anchor tenant for a portion of the building; and

WHEREAS, the applicant states that negotiations related to the proposed construction of the Second Avenue subway caused some of the delay, but that the owner now has the means to begin construction; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on February 8, 2000, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, for an additional period of two years from the date of this resolution, to expire on February 28, 2008; on condition:

THAT a new certificate of occupancy shall be obtained within two years from the date of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the

Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”
(DOB Application No. 101741233)

Adopted by the Board of Standards and Appeals, February 28, 2006.

54-01-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Michael Koegel and Francesca Koegel, owners.

SUBJECT – Application December 13, 2005 – request for an extension of time to complete construction and obtain a new certificate of occupancy which expires on January 8, 2006.
PREMISES AFFECTED –2508 Avenue J, between Bedford Avenue and East 26th Street, Block 7607, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on February 7, 2006, after due notice by publication in *The City Record*, and then to decision on February 28, 2006; and

WHEREAS, the subject 5,000 sq. ft. site is located between Bedford Avenue and East 26th Street, and is within an R2 zoning district; and

WHEREAS, on January 8, 2002, the Board granted an application under the subject calendar number pursuant to ZR § 73-622, to permit the proposed enlargement of a single-family home located at the site; and

WHEREAS, the applicant represents that due to the owner’s financial difficulties, construction did not commence after the grant was made; and

WHEREAS, the applicant represents that the owner now has the means to commence construction; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on January 8, 2000, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, for an additional period of three years from the date of this resolution, to expire on

MINUTES

February 28, 2009; *on condition*:

THAT a new certificate of occupancy shall be obtained within three years from the date of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 301120711)

Adopted by the Board of Standards and Appeals, February 28, 2006.

617-80-BZ

APPLICANT – Eric Palatnik, P.C., for J & S Simacha, Inc., owner.

SUBJECT – Application May 12, 2005 – Application for an extension of time to complete construction and obtain a certificate of occupancy.

PREMISES AFFECTED – 770/780 McDonald Avenue, west side 20’ south of Ditmas Avenue, Block 5394, Lots 1 and 11, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for decision, hearing closed.

705-81-BZ

APPLICANT – Agusta & Ross, for Fraydon Enterprises, owner; New York Health & Racquet Club, lessee.

SUBJECT – Application May 23, 2005 – Application for an Extension of Term/Amendment/Waiver for a Variance Z.R. 72-21 to continue the operation of a physical culture establishment and to permit the change in hours of operation. The premise is located in an R-10 zoning district.

PREMISES AFFECTED – 1433-37 York Avenue, northwest corner of York Avenue and East 76th Street, Block 1471, Lots 21, 22 and 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 10 A.M., for continued hearing.

1-95-BZ

APPLICANT – Francis Angelino, Esq., for 117 Seventh Avenue So. Property, LLP, owner, TSI Sheridan, Inc. dba NY Sports Club, lessee.

SUBJECT – Application October 6, 2006 – Extension of Term/Waiver for a Physical Cultural Establishment located in a C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, corner of West 10th Street and Seventh Avenue South, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for decision, hearing closed.

83-00-BZ

APPLICANT – Eric Palatnik, P.C., for KFC US Properties, Inc., owner.

SUBJECT – Application September 21, 2005 – Reopening for a waiver of the Rules of Practice and Procedure and for an extension of the term of special permit which expired September 26, 2003.

PREMISES AFFECTED – 87-11/21 Northern Boulevard, northern corner of 88th Street, Block 1417, Lot 36, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

25-04-A and 26-04-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Michael Picciallo, owner.

MINUTES

SUBJECT – Application February 11, 2004 – Proposed construction of a one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED – 496/500 Bradford Avenue, south side, 148' south of Drumgoole Road, Block 6946, Lot 36, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Staten Island Borough Commissioner dated January 22 2004 and updated on January 27, 2006, acting on Department of Buildings Application Nos. 500818993 and 500819000, reads:

“No permit shall be issued for any buildings or portion of a building in the bed of a any street without a variance from the BSA’, and

WHEREAS, a public hearing was held on this application on September 21, 2004 after due notice by publication in the *City Record*, with continued hearings on December 7, 2004, March 1, 2005, June 14, 2005, September 27, 2005, December 6, 2005, and February 14, 2006, and then to decision on February 28, 2006; and

WHEREAS, by letter dated June 30, 2004, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 15, 2005, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 31, 2004, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the two homes that are the subject of this resolution are part of a larger development that is subject to City Planning Certification for compliance with the Lower Density Growth Management Text Amendment, and

WHEREAS, the Board notes that its grant herein only pertains to the ability to build within the bed of a mapped street, and that all construction must conform and comply with applicable zoning regulations; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated January 22, 2004 and updated on January 27, 2006, acting on Department of Buildings Application No. 500818993 & 500819000, are s modified under the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially

conform to the drawing filed with the application marked “Received January 31, 2006”– (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT no permit shall be issued until the all appropriate certifications are issued by the City Planning Commission;

THAT any further revision to the BSA approved site plan must be submitted to the Board for its approval;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

200-05-A and 201-05-A

APPLICANT – Joseph P. Morsellino, for Randolph Mastronardi, et. al., owners.

SUBJECT – Application August 23, 2005 – to permit the building of two conforming dwellings in the bed of mapped 157th Street as per GCL Section 35.

PREMISES AFFECTED – 20-17 and 20-21 Clintonville Street, Clintonville Street between 20th Avenue and 20th Road, Block 4750, Lots 3 and Tent. 6. Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 25, 2005 acting on Department of Buildings Application Nos. 402119097 & 402181134, reads:

“Buildings in the bed of a mapped street are referred to the Board of Standards and Appeals as per Section 35 of the General City Law ”; and

WHEREAS, a public hearing was held on this application on December 6, 2005 after due notice by publication in the *City Record*, with a continued hearing on January 24, 2006, and then to closure and decision on February 28, 2006; and

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WHEREAS, by letter dated January 12, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated January 20, 2006, the Department of Transportation has reviewed the project and has recommended that the applicant setback the proposed buildings (including the proposed steps) to allow for future street intersection improvements; and

WHEREAS, by letter dated February 14, 2006, in response to the DOT recommendations, the applicant states that it has set the buildings back 15 ft. to 19 ft. at the front; and

WHEREAS, by letter dated October 3, 2005, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, the Board notes that its grant herein only pertains to the ability to build in the bed of the mapped street and that all construction must conform and comply with applicable zoning regulations; and

WHEREAS, subdivision of the lots is subject to Department of Buildings approval; no Board approval of any subdivision is granted herein; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decisions of the Queens Borough Commissioner, dated July 25, 2005, acting on Department of Buildings Application Nos. 402119097 & 402181134, are modified under the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received February 22, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT any subdivision shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

1-06-A

APPLICANT – Zygmunt Staszewski for Breeze Point Cooperative, owner, Jeanine Kourbage, lessee.

SUBJECT – Application January 4, 2006 – Proposed reconstruction and enlargement of an existing one family

dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system located in the bed of a service lane is contrary to the Buildings Department Policy.

PREMISES AFFECTED – 404 Bayside, North of Palmer Drive, 10.67' feet west of Rockaway Point Boulevard, Block 16350, part of Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated December 28, 2005, acting on Department of Buildings Application No. 402257044, reads:

"A1- The Street giving access to the existing building to be altered is not duly placed on the official map of the City of New York.

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgraded private disposal system is contrary to Department of Buildings policy;" and

WHEREAS, a public hearing was held on this application on February 28, 2006 after due notice by publication in the *City Record*, hearing closed and then to decision on February 28, 2006; and

WHEREAS, by letter dated January 12, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 28, 2005, acting on Department of Buildings Application No. 402257044, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received January 4, 2006"-(1) sheet; that the proposal

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shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

2-06-A

APPLICANT – Zygmunt Staszewski for Breezy Point Cooperative, owner, Ken Peter, lessee.

SUBJECT – Application January 4, 2006 – Proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system located in the bed of a service lane is contrary to the Buildings Department Policy.

PREMISES AFFECTED – 25 Janet Lane, North of Jane Lane 114.88 feet, Block 16350, part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 29, 2005, acting on Department of Buildings Application No. 402227158, reads:

“A1- The Street giving access to the existing building to be altered is not duly placed on the official map of the City of New York.

- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
- b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-

291 of the Administrative Code.

A2- The proposed upgraded private disposal system is contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on February 28, 2006 after due notice by publication in the *City Record*, hearing closed, and then to decision on February 28, 2006; and

WHEREAS, by letter dated January 12, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, December 29, 2005, acting on Department of Buildings Application No. 402227158, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received January 4, 2006”–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

3-06-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperation, owner, Elizabeht Bianco, Lessee.

SUBJECT – Application January 4, 2006 – Proposed reconstruction and enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law and the upgrade of an existing private disposal system located in the bed of a service lane is contrary to the Buildings Department Policy.

PREMISES AFFECTED – 439 Hillcrest Walk, West of Hillcrest Walk, 48.68 Feet of Rockaway Point Boulevard, Block 16350, part of Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

MINUTES

Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Queens Borough
Commissioner, dated December 28, 2005, acting on Department
of Buildings Application No. 402255581, reads:

- “A1- The street giving access to the existing
building to be altered is not duly placed on the
official map of the City of New York.
- a) A Certificate of Occupancy may not be
issued as per Article 3, Section 36 of the
General City Law.
 - b) Existing dwelling to be altered does not have
at least 8% of total perimeter of the building
fronting directly upon a legally mapped street
or frontage space is contrary to Section 27-
291 of the Administrative Code.
- A2- The proposed upgraded private disposal
system is contrary to Department of Buildings
policy;” and

WHEREAS, a public hearing was held on this application
on February 28, 2006 after due notice by publication in the *City
Record*, hearing closed, and then to decision on February 28,
2006; and

WHEREAS, by letter dated January 12, 2006, the Fire
Department states that it has reviewed the above project and has
no objections; and

WHEREAS, the applicant has submitted adequate
evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens
Borough Commissioner, dated December 28, 2005, acting on
Department of Buildings Application No. 402255581, is
modified by the power vested in the Board by Section 36 of the
General City Law, and that this appeal is granted, limited to the
decision noted above; *on condition* that construction shall
substantially conform to the drawing filed with the application
marked “Received January 4, 2006” – (1) sheet; that the
proposal shall comply with all applicable zoning district
requirements; and that all other applicable laws, rules, and
regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the
Board in response to specifically cited and filed DOB/other
jurisdiction objection(s) only;

THAT the approved plans shall be considered approved
only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure
compliance with all other applicable provisions of the Zoning
Resolution, the Administrative Code, and any other relevant
laws under its jurisdiction irrespective of
plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
February 28, 2006.

7-06-A

APPLICANT – Gary Lenhart, for Breezy Point Cooperative,
owner, Patricia & Frank Ulrich, lessee.

SUBJECT – Application January 10, 2006 – Proposed
reconstruction and enlargement of an existing one family
dwelling, not fronting on mapped street, is contrary to
Section 36, Article 3 of the General City Law and the
upgrade of an existing private disposal system located in the
bed of a service lane is contrary to the Building Department
Policy.

PREMISES AFFECTED – 42 Queens Walk, W/S Queens
Walk 165.53’ S/O Oceanside Avenue, Block 16350, part of
Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on
conditions.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated December 28, 2005, acting on Department
of Buildings Application No. 402240936, reads:

- “A1- The Street giving access to the existing
building to be altered is not duly placed on the
official map of the City of New York.
Therefore:
- a) A Certificate of Occupancy may not be issued
as per Article 3, Section 36 of the General City
Law.
 - b) Existing dwelling to be altered does not have at
least 8% of total perimeter of the building
fronting directly upon a legally mapped street
or frontage space is contrary to Section 27-291
of the Administrative Code.
- A2- The proposed upgraded private disposal system
is in the bed of a service lane contrary to the
Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application
on February 28, 2006 after due notice by publication in the *City
Record*, hearing closed, and then to decision on February 28,
2006; and

WHEREAS, by letter dated January 20, 2006, the Fire
Department states that it has reviewed the above project and has
no objections; and

WHEREAS, the applicant has submitted adequate

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evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 28, 2005, acting on Department of Buildings Application No. 402240936, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; on condition that construction shall substantially conform to the drawing filed with the application marked "Received January 17, 2006" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

198-05-A

APPLICANT – Sheldon Lobel, P.C., for Huyian Wu, owner.
SUBJECT – Application August 22, 2005 – Proposed construction and enlargement of an existing one family dwelling, not front on mapped street, is contrary to Section 36, Article 3 of the General City Law.

PREMISES AFFECTED – 6 Cornell Lane, a/k/a 43-06 Cornell Lane, Eastern side of Cornell Lane north of Northern Boulevard, Block 8129, Lot 135, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 14, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: 11:00 A.M.

REGULAR MEETING

TUESDAY AFTERNOON, FEBRUARY 28, 2006

1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

164-04-BZ

CEQR #04-BSA-170X

APPLICANT – Moshe M. Friedman, P.E., for 2241 Westchester Avenue Realty Corp., owner; Gotham City Fitness LLC, lessee.

SUBJECT – Application April 22, 2004 - under Z.R.§73-36 to permit the proposed physical culture establishment, located on the second floor of an existing two story commercial building, located in C2-6 within an R6 zoning district, is contrary to Z.R. §32-00.

PREMISES AFFECTED - 2241 Westchester Avenue, aka 2101 Glebe Avenue, Block 3963, Lot 57, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 28, 2005, acting on Department of Buildings Application No. 301973559, reads, in pertinent part:

“Proposed Floor Area is contrary to ZR: 23-141
Proposed Open Space Ratio is contrary to ZR: 23-141

Proposed side yard is contrary to ZR: 23-461(a)

Proposed rear yard is contrary to ZR: 23-47”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), Open Space Ratio (OSR), and side and rear yards, contrary to ZR §§ 23-141(a), 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on January 24, 2006, after due notice by publication in *The City Record*, and then to decision on February 28, 2006; and

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WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on East 21st Street, between Avenues R and S; and

WHEREAS, the subject lot has a total lot area of 3,000 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,382 sq. ft. (0.67 FAR) to 2,979 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the OSR from 66% to 56%; the minimum required OSR is 65%; and

WHEREAS, the proposed enlargement of the existing building will increase the width of one the non-complying side yards from 3'-9" to 4'-2 1/2"; this width is still non-complying; and

WHEREAS, the proposed enlargement building will extend the other 5'-0" non-complying side yard; however, the width of the side yard will be maintained; and

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the proposed enlargement will reduce the rear yard from 39'-0" to 20'-0"; the minimum rear yard required is 30'-0"; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, Open Space Ratio, and side and rear yards, contrary to ZR §§ 23-141(a), 23-461(a) and 23-47; *on*

condition that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 23, 2005"-(8) sheets; and "February 27, 2006"-(3) sheets, and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the total FAR on the premises, including the attic, shall not exceed 0.99;

THAT the total attic floor area shall not exceed 884 sq. ft., as confirmed by the Department of Buildings;

THAT DOB shall review and approve the location of any garage;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

269-04-BZ

CEQR #05-BSA-021K

APPLICANT – Law Office of Howard Goldman, LLC, for 37 Bridge Street Realty, Corp., owner.

SUBJECT – Application August 2, 2004 – under Z.R. §72-21 to permit the conversion of a partially vacant, seven-story industrial building located in a M1-2 and M3-1 zoning district into a 60 unit loft style residential dwelling in the Vinegar Hill/DUMBO section of Brooklyn.

PREMISES AFFECTED – 37 Bridge Street, between Water and Plymouth Streets, Block 32, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

MINUTES

Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 1, 2004, acting on Department of Buildings Application No. 301783176, reads:

“The proposed residential dwellings in [an] M1-2 and M3-1 district are contrary to Section 42-00 of the Zoning Resolution and require a variance from the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot partially within an M1-2 zoning district and partially within an M1-3 zoning district, the proposed conversion of a three and seven-story manufacturing building to residential use, contrary to Z.R. § 42-00; and

WHEREAS, a public hearing was held on this application on August 9, 2005, after due notice by publication in the *City Record*, with continued hearings on October 18, 2005, November 29, 2005, January 10, 2006, and February 14, 2006, and then to decision on February 28, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is a 12,500 sq. ft. lot located on Bridge Street between Water and Plymouth Streets in the Vinegar Hill neighborhood of Brooklyn; and

WHEREAS, the subject premises is a contributing resource to the DUMBO National Register Historic District and is therefore a Type I action for purposes of the City Environmental Quality Review; and

WHEREAS, the property is currently improved upon with a three- and seven-story building, with a total existing floor area of approximately 67,500 sq. ft. for a Floor Area Ratio (“FAR”) of 5.4; the seven-story portion rises to a height of 79’-11”, and the three-story portion rises to a height of 46’-7”; and

WHEREAS, the building was formerly occupied by a soap manufacturer, and there are eight existing metal silos that extend five stories in height from the cellar of the seven-story portion; the silos do not have any floors; and

WHEREAS, as originally filed, the applicant proposed the conversion of the two building sections to 53 residential units, with the modification of the rear of the building to create a 1,200 sq. ft. courtyard, which would provide legal light and air to the newly created units; and

WHEREAS, the applicant initially proposed the relocation of the square footage removed for the courtyard to the top of the three-story portion, which would result in two new stories; the converted building as originally proposed has an FAR of 5.4 with 60 total units; and

WHEREAS, as discussed in further detail below, the Board required the applicant to modify the proposal, so that no carved-out floor area was relocated to the top of the three-story portion; the proposal went through various iterations until the

applicant agreed to the current version, including a version with a total FAR of 5.09 and 53 total units; and

WHEREAS, the building as currently proposed has the following parameters: a total FAR of 5.07; floor area of 63,394 sq. ft.; 52 units; and no on-site accessory parking spaces; the existing heights of the two building sections would not change; and

WHEREAS, as discussed below, the applicant will lease and/or obtain 26 parking spaces in parking facilities (garage or lot) or private buildings within a one half mile radius of the site prior to obtaining a temporary or permanent certificate of occupancy; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site with a conforming building: (1) the seven-story portion of the building was formerly used by a soap manufacturer, and contains eight metal silos which encumber the floor plates of all but the top two floors; (2) the building possesses only non-conforming loading docks, only one of which is at grade; (3) the building is divided into two sections, and as a result has disconnected floor plates that are not aligned, which hinders the movement of bulk goods between floors; and (4) the ceilings are 11 ft. high, which is obsolete by modern manufacturing standards; and

WHEREAS, as to the first basis of uniqueness, the applicant contends that the existence of the silos renders the building unmarketable to a typical modern conforming user (either manufacturing or office), which would not have any use for five-story silos in the middle of the floor plates on five of the seven floors; and

WHEREAS, in response to a request of the Board, the applicant submitted photos of the silos, which confirm their existence and their location within the floor plates of the seven-story portion; and

WHEREAS, as to the second basis of uniqueness, the applicant states that the building would require three conforming off-street loading docks, each measuring 12 ft. in width, 14 ft. in height, and 50 ft. in depth; and

WHEREAS, the applicant states the building only has one street level dock, which measures 10 ft. in height and has limited bay capacity; and

WHEREAS, at the request of the Board, the applicant submitted photos of the existing docks, which confirm the above representations; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the current applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed the following scenarios: (1) a rehabilitation of the building for manufacturing purposes; (2) a rehabilitation of the building for commercial office purposes; and (3) the initially proposed residential conversion; and

WHEREAS, the study concluded that the two rehabilitation options did not provide a reasonable return, due to

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the aforementioned site conditions and the expenditures that would be incurred to remedy them; and

WHEREAS, at hearing, the Board requested further analyses from the applicant; specifically, the Board asked for an analysis of a conforming use project with the tanks in place, and for an analysis with the tanks removed and the volume rebuilt as useable floor area; and

WHEREAS, the applicant conducted the requested studies, and concluded that neither alternative was financially viable; specifically, the applicant explained that the costs associated with the removal of the tanks would not be offset by market rate revenues that could be realized through a conforming use; and

WHEREAS, the Board also asked the applicant to provide documentation of marketing efforts in 2005; and

WHEREAS, the applicant responded by submitting a letter from a managing agent and sample advertisements from local newspapers; and

WHEREAS, the applicant stated that none of the advertisements generated a request for a showing, or a lease offer, for any portion of the site; and

WHEREAS, the Board also questioned the applicant about the three-story building section, which is not encumbered by silos and which was recently occupied; the Board suggested that this section could be used by a conforming user in a mixed-use scenario; and

WHEREAS, the applicant stated that the last tenant of the three-story section moved its operations, and that marketing attempts as to this section had also failed; and

WHEREAS, finally, the Board asked the applicant to address the site valuation; specifically, the Board suggested that the site valuation should reflect a reduction based upon the fact that the silos did not contain usable floor space; and

WHEREAS, the applicant responded by submitting a revised feasibility study reflecting a discount for the lack of useable floor area within the silos; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that its submitted land use map shows that the subject neighborhood has a mix of uses, including residential uses along Bridge Street, a proposed residential building one block away at 192 Water Street, a residential building at 223 Water Street, and a rezoned site at 87 Jay Street, proposed to be developed residentially; and

WHEREAS, the applicant states that the introduction of 52 dwelling units within this mixed-use context will not affect the character of the neighborhood, nor impact conforming uses; the applicant states that the nearest significant industrial use is a

Con Ed plant located on the waterfront to the north of the subject site; and

WHEREAS, the Board agrees that the proposed use will not change the essential character of the neighborhood; and

WHEREAS, however, the Board expressed significant concerns about the lack of accessory parking in the proposed building, and asked the applicant to explain why a parking garage could not be provided on-site; and

WHEREAS, the applicant responded by providing a study which showed that creation of a parking facility within the building would be difficult and therefore cost-prohibitive to construct, and also would not provide sufficient space to accommodate the 26 spaces that would be required for new ground up residential development; and

WHEREAS, the applicant also states that the garage would be an inefficient use of available floor space; specifically, as shown in a schematic and as discussed in a memo from the project architect, the maximum number of spaces that could be constructed is five; and

WHEREAS, the applicant stated that the costs of constructing a garage with an appropriate ramp system would be significant and impact the return since the number of spaces that could be created is minimal, and insufficient to overcome the added construction costs; and

WHEREAS, the applicant also stated that construction of a garage would result in the elimination of a proposed unit, further diminishing the return of the proposal; and

WHEREAS, in support of the contention that on-site parking was not an absolute necessity, the applicant submitted a parking/mass transit survey, which indicated that there would be a sufficient supply of off-street parking in the immediate area to accommodate the parking demands generated by the proposed conversion; and

WHEREAS, specifically, the study showed that within a one quarter mile radius of the site, there were 46 available parking spaces during the weekday early morning hours, which would be sufficient to address the generated parking demand; and

WHEREAS, the study also cited to two off-street parking facilities in the study area that provide a total of 300 off-street parking spaces; the facilities were found to have low utilization rates; and

WHEREAS, finally, the study cited to two nearby subway stations, and four bus routes, that service the neighborhood; and

WHEREAS, the Board has reviewed the submitted studies and agrees that provision of an on-site parking facility might be infeasible and that the area has some available parking and is served by mass transit; and

WHEREAS, nevertheless, the Board observes that the neighborhood is changing rapidly and that more residential development is planned; consequently, the need for off-street parking for new residential development is an important consideration; and

WHEREAS, accordingly, the Board, through conditions in this resolution, is requiring that prior to the issuance of a certificate of occupancy, the applicant obtain leases with nearby

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parking garages or obtain spaces within private buildings, providing at least 26 spaces for the use of the future occupants of the converted building; and

WHEREAS, the applicant has agreed to such conditions, and has provided the Board with the location of nearby garages and proposed residential buildings, including three that the affiliates of the site's owner have control over; and

WHEREAS, in addition, at hearing, the Board expressed concern about an external stairwell located on the roof of the three-story portion, which was visually obtrusive; and

WHEREAS, at the request of the Board, this stairwell was relocated into the envelope of the building, such that the proposal no longer includes any rooftop improvements; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the proposed conversion went through earlier versions prior to the final version approved herein; and

WHEREAS, specifically, the applicant initially proposed a two-story addition to the three-story section of the building; and

WHEREAS, after the Board requested the elimination of this enlargement, the applicant submitted a scenario that retained an 800 sq. ft. apartment on top of the three-story portion; and

WHEREAS, the Board suggested to the applicant that this scenario did not represent the minimum variance; and

WHEREAS, at the request of the Board, the applicant reduced the proposal to the current version; and

WHEREAS, therefore, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA021K dated March 17, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of

Environmental Protection (DEP) has reviewed the following submissions from the applicant: (1) an Environmental Assessment Statement Form, dated March 17, 2005; (2) a Phase I Environmental Site Assessment Report, dated October 18, 2004; (3) Noise and Air Quality documents, dated May 2005; and (4) a Sampling Protocol and Health and Safety Plan, dated March 2005; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, air quality and noise impacts; and

WHEREAS, a Restrictive Declaration was executed and submitted for proof of recording on September 28, 2005, which requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the Restrictive Declaration and the Applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a lot partially within an M1-2 zoning district and partially within an M1-3 zoning district, the proposed conversion of a three- and seven-story manufacturing building to residential use, contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 31, 2006" - (12) sheets and "Received February 27, 2006" - (1) sheet; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: 52 total dwelling units; a total floor area of 63,394 sq. ft.; a total FAR of 5.07; and a courtyard as reflected on the BSA-approved plans;

THAT prior to the issuance of any temporary or permanent certificate of occupancy, the applicant shall submit to the Department of Buildings (with a copy to the Board) a copy of one or more binding agreements between the applicant or any successor and one or more buildings, lots, or garages located within a one half mile radius of the subject site, indicating that a total of 26 parking spaces are available for the exclusive use by the occupants of the subject premises within such buildings;

THAT this requirement shall be listed as an objection on any DOB-issued objections list for the DOB application number referenced herein (or any successor DOB objection application number), for the proposed conversion approved herein, in order to obtain an initial TCO;

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THAT each temporary or permanent certificate of occupancy for the subject premises shall list the location and number of available parking spaces;

THAT the availability of parking spaces in accordance with this Resolution shall be included in any offering plan for the subject site or as a condition of any lease by the occupants of the subject site;

THAT such binding agreement(s), if termed, must be renewed upon expiration;

THAT a copy of any renewal of an existing agreement or of a substituted new agreement with a different building, lot, or garage shall be forward to both DOB and the Board, and that the certificate of occupancy shall be modified to reflect the new information;

THAT these parking space requirements may not be modified, except with the prior approval of the Board;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

77-05-BZ

CEQR #05-BSA-113M

APPLICANT – Greenberg Traurig, LLP by Deirdre Carson, for Jack Ancona, owner.

SUBJECT – Application March 29, 2005 – under Z.R. §72-21 – to permit the proposed construction of a twelve-story mixed building, containing residential and retail uses, located within an M1-6 zoning district, in which residential use is not permitted as of right, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 132 West 26th Street, south side, 364.5’ west of Sixth Avenue, Block 801, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES -

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 21, 2005, acting on Department of Buildings Application No. 104039728, reads, in pertinent part:

“Proposed residential use (Use Group 2) is not permitted in M1-6 zoning district”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-6 zoning district, the proposed construction of a twelve-story mixed-use residential/retail building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 23, 2005 after due notice by publication in the *City Record*, with continued hearings on October 25, 2005, November 29, 2005 and January 24, 2006, and then to decision on February 28, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board 4, Manhattan, states that it has no objection to this application; and

WHEREAS, this application was opposed by certain neighbors of the site (hereinafter, the “opposition”); the basis of the opposition was whether the proposal represents the minimum variance in terms of the amount of floor area; and

WHEREAS, the subject premises is located on the south side of West 26th Street (a narrow street), approximately 364 ft. west of the intersection of Sixth Avenue and West 26th Street; and

WHEREAS, the site is narrow, with a width of 18’9”, and a total lot area of 1,851.5 sq. ft.; and

WHEREAS, the site is currently improved upon with a four-story building with a total floor area of 3,375 sq. ft., for a total Floor Area Ratio (“FAR”) of 1.82 (a FAR of 10.0 is permitted in the subject zoning district); and

WHEREAS, the first floor is currently occupied by a temporary retail use; the second floor is vacant, and the second and third floors are occupied by lawful non-conforming residential apartments; and

WHEREAS, the applicant claims that the first floor tenancy is a stop-gap measure and the occupant was allowed to lease the space so that money could be generated to pay real estate taxes during the pendency of this proceeding; and

WHEREAS, the proposal is a 135 ft. high twelve-story building, with a total floor area of 16,218.5 sq. ft., and a FAR of 8.76; and

WHEREAS, the proposed building will contain ten dwelling units on the third through twelfth floors, with retail use on the ground and second floors; no parking will be provided; and

WHEREAS, the ground floor will be fully built out; the second floor will be set back 20 ft. in the rear, and the third through twelfth floors will be set back 30 ft. in the rear; no front setback will be provided; and

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WHEREAS, the applicant states that the envelope of the proposed building is consistent with the underlying M1-6 bulk regulations except for the front setback, in that a 20 ft. setback would ordinarily be required at a height of 85 ft. on a narrow street such as West 26th Street; and

WHEREAS, the applicant states that the following is a unique physical condition which creates unnecessary hardship and practical difficulties in developing the site with a conforming use: the lot is very narrow, having a width of only 18'9", which is unusual in the subject zoning district; and

WHEREAS, the applicant states that in an eight-block radius of the site, there are only six lots that are 20 ft. or less in width; the applicant notes that unlike the subject lot, these lots are grouped together with lots of similar size, such that the lots could be merged and a developable site created; and

WHEREAS, at the request of the Board, the applicant submitted a map showing these other lots; and

WHEREAS, the applicant states that the narrowness of the lot does not allow for development of a building with floor plates that could sustain a viable commercial or manufacturing use, while still providing the two required means of egress; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical condition creates unnecessary hardship and practical difficulty in developing the site in conformance with the current applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed the following scenarios: (1) a conforming commercial office development, with 18,330 sq. ft. of floor area; (2) the proposed residential/retail development; and (3) an eleven-story mixed-use residential/retail development alternative which would comply with the bulk parameters of an R9A zoning district, with a total FAR of 7.52 (discussed below); and

WHEREAS, the study concluded that the conforming commercial scenario would not realize a reasonable return; and

WHEREAS, the opposition made numerous contentions as to whether the existing four-story building could be retrofitted to accommodate a viable conforming use; and

WHEREAS, however, the Board notes that the existing building is not being credited as part of the uniqueness; thus the Board finds it unnecessary to address these contentions; and

WHEREAS, further, as noted by the applicant, requiring the owner of the site to be limited to the under-built envelope of the existing building would require a significant sacrifice of available development rights such that a reasonable return from the site is impossible; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that within a 400 ft. radius of the site, 40 percent of the sites are occupied by residential uses; and

WHEREAS, the applicant notes that large portions of the blocks between Sixth and Seventh Avenues and West 24th and 28th Streets were subject to text amendments in the 1980s to allow existing residential units to be legalized; and

WHEREAS, the applicant states that the building to the east of the site has been converted to residential use, and that two other buildings to the west of the site on the south side of West 26th Street have been converted to residential use; and

WHEREAS, the applicant also states that the height and setback configuration of the building is consistent with the existing buildings on the subject block; and

WHEREAS, the applicant notes that all of the buildings along the south side of West 26th Street rise without setback to their full heights, and that many of the buildings exceed the height of the proposed building by 15 ft.; and

WHEREAS, the Board agrees that the introduction of ten residential units will not affect the character of the community, ~~and the opposition does not~~ contest that the subject lot is unique and present

WHEREAS, additionally, the Board observes that the envelope of the proposed building is comparable to other buildings on the subject block; and

WHEREAS, the opposition does not dispute that the proposed residential use and the proposed height of the building are consonant with the character of the community; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant analyzed a lesser variance mixed-use residential/retail scenario, with a lesser FAR, and determined that it would not realize a reasonable return; and

WHEREAS, at hearing, the Board suggested that a higher return from this scenario might be realized if the street wall and rear wall parameters of the proposal were maintained, and the second floor was designated residential instead of retail; and

WHEREAS, the applicant conducted a study of this scenario; and

WHEREAS, the applicant concluded that such a scenario would not realize a reasonable return; specifically, the applicant claims that the ground floor retail use will not have any street presence because of the narrowness of the site and the entrance requirements, thus necessitating second floor retail space to compensate for this disadvantage; and

WHEREAS, the applicant also states that having a residential unit on the second floor reduces available floor area that could be used on higher, more valuable floors, which further diminishes revenue; and

WHEREAS, the Board also notes that the presence of buildings adjacent to the building's lot lines on three sides

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creates a dark rear yard, which further contributes to problems in using the second floor for residential; and

WHEREAS, the opposition made the following contentions regarding the feasibility study submitted by the applicant, as they relate to the applicant's contention that the proposal reflected the minimum variance: (1) the comparables used to establish sell-out value are low; and (2) certain construction cost elements appear to be inflated; and

WHEREAS, the applicant responded by noting that no financial evidence or documentation was provided by the opposition as to either of the contentions; and

WHEREAS, nonetheless, the applicant submitted a statement from its feasibility expert that provides supporting information for the comparables that were used to establish sell-out value; and

WHEREAS, the statement also addresses the construction costs issue; specifically, the statement concludes that the costs of the inspections, borings and surveys are appropriate in light of the small size of the site, and that the legal fees are in alignment with costs for similar projects; and

WHEREAS, a further submission from the applicant, dated December 13, 2005, provides: (1) additional information about the costs challenged by the opposition; and (2) additional information in support of the sell-out values; and

WHEREAS, the Board has reviewed the applicant's response and finds it to be a sufficient rebuttal to the claims of the opposition made up to that point in the hearing process; and

WHEREAS, however, the opposition made a submission dated January 3, 2006, which essentially restated many of the above-mentioned claims; and

WHEREAS, specifically, the opposition claimed that the comparables used by the applicant to establish sell-out value were old and should be updated; and

WHEREAS, the opposition also suggested that marketing evidence should be required by the Board; and

WHEREAS, the applicant submitted a response on January 17, 2006, stating that since the construction cost analysis also reflects the time period when the comparables were obtained, it makes no sense to adjust the comparables and not the construction costs as well; the applicant states that it is irrational to require constant updating to financial data, when the result would be that any change to one of the variables would be addressed by a change in another, such that there would not be any impact on the viability of a scenario; and

WHEREAS, additionally, the applicant provided an explanation as to why the feasibility study was the appropriate method for establishing hardship on the site, as opposed to marketing evidence; and

WHEREAS, the Board has reviewed this response and again finds it sufficient; the Board also notes that when it does require financial data to be updated, the applicant is allowed to update all relevant financial information; and

WHEREAS, as to marketing evidence, the Board agrees with the applicant that it is optional supplemental information and not always necessary in the case where hardship is established by the feasibility study; and

WHEREAS, the opposition made a final submission, dated February 6, 2006, alleging that: (1) the comparables used by the applicant were false, in that they did not compare to the new structure in terms of date of construction; (2) \$100,000 was missing from income calculations in the most recent feasibility studies; and (3) the comparables used for the site valuation were overvalued; and

WHEREAS, the applicant responded on February 14, 2006, explaining that the comparables used for sell-out value were appropriate, and that the method of valuing each apartment separately provides the most accurate sell-out value; and

WHEREAS, the Board also finds that the site valuation comparables used by the applicant are appropriate, and notes that the opposition provided no substantive reasons or proof as to why the comparables were in any way invalid; and

WHEREAS, specifically, the Board observes that the subject location is poor compared to some of the comps used, the site is particularly narrow, and that this narrowness and small size only allows for residential floor plates that are compromised in terms of efficiency, resulting in a lower sell-out value; and

WHEREAS, the Board also notes that the applicant appropriately priced the higher floor units at well over \$1,000 per sq. ft.; and

WHEREAS, finally, the Board notes that the deduction of \$100,000 from income calculations would not have a significant effect on the rate of return for the lesser FAR scenario; and

WHEREAS, in sum, the Board has reviewed all of the opposition's arguments as made in submissions and at hearing, and finds that either the applicant has sufficiently responded to all of them, or that they are without merit or impact on the outcome; and

WHEREAS, therefore, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA113M dated March 29, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact

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Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-6 zoning district, the proposed construction of a twelve-story mixed-use residential/retail building, contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2005"- two (2) sheets and marked "Received February 28, 2006"- four (4) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: 10 total dwelling units; a total FAR of 8.76; a residential FAR of 6.96, a commercial FAR of 1.80, a total height of 135'-2", a 30 ft. rear yard at floors three through 12; and a 20 ft. rear yard at the second floor;

THAT all balconies at the rear of the property shall be as reviewed and approved by DOB for compliance with applicable permitted obstructions provisions;

THAT the shared stairs and egress, as shown on the plans, for the proposed commercial and residential uses in the building are not part of this approval and shall be as reviewed and approved by DOB to ensure compliance with all applicable laws;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

137-05-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for Danny Dalal, owner.

SUBJECT – Application June 3, 2005 – Under Z.R. §72-21 to construct a one family, two story and attic dwelling which does not comply with the minimum required lot width of 60'-0" as per ZR 23-32. The premise is located in an R1-2 zoning district.

PREMISES AFFECTED – 198-61 Foothill Avenue, north side of Foothill Avenue 230.47' from the corner of Foothill Avenue and Hillside Avenue, Block 10532, Lot 139, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Sandy Anagnostov.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 12, 2005, acting on Department of Buildings Application No. 401721277, reads, in pertinent part:

"Lot width does not comply with the minimum required lot width of 60'-0" as per Section 23-32 ZR"; and

WHEREAS, this is an application under ZR § 72-21, to permit the proposed construction of a two-story, single-family residence, located in an R1-2 zoning district, which does not comply with the zoning requirements for minimum lot width, contrary to ZR § 23-32; and

WHEREAS, a public hearing was held on this application on February 7, 2006, after due notice by publication in *The City Record*, and then to decision on February 28, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board 8, Queens, recommends disapproval of this application; and

WHEREAS, the Holliswood Civic Association also recommends disapproval of this application; and

WHEREAS, the record indicates that the subject premises is located on the north side of Foothill Avenue, 230.47 ft. from the corner of Foothill Avenue and Hillside Avenue, and is currently vacant; and

WHEREAS, the subject lot is a trapezoidal-shaped lot, with a non-complying lot width of 25'-0" along the front lot line, expanding to 60'-0" at the rear lot line; and

WHEREAS, while the rear lot line width is 60'-0", the minimum required lot width is 60'-0" based upon the mean horizontal distance between the side lot lines; because of the lot's trapezoidal shape, the mean distance requirement is not met; and

WHEREAS, the applicant represents that the subject lot was created in 1980 as a result of a sub-division; and

WHEREAS, the applicant represents that the subject lot was purchased by the applicant on September 28, 2001; a recorded indenture was submitted to the Board evidencing such purchase; and

WHEREAS, at the time the applicant purchased the lot, it was within an R2 zoning district; under R2 zoning, the lot had a complying lot width as the required minimum lot width was 40'-0"; and

WHEREAS, the applicant represents that the mean horizontal distance between the side lot lines complied with

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the R2 zoning district minimum lot width requirement; and
WHEREAS, on June 17, 2003, the lot was rezoned to R1-2, which requires a lot width of 60'-0"; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties in developing the subject lot in compliance with underlying district regulations: the site is a narrow, irregularly-shaped and vacant lot; and

WHEREAS, the applicant has submitted a 400'-0" radius diagram that indicates that the subject lot is one of the only vacant lots with a non-complying lot width in the subject zoning district; and

WHEREAS, the Board finds that the aforementioned unique conditions create practical difficulty in developing the site in compliance with the applicable zoning provision; and

WHEREAS, the applicant states that without the requested waiver, no residence could be constructed on the property; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict compliance with the applicable zoning requirements will result in any development of the property; and

WHEREAS, the applicant states that the building will comply with all R1-2 zoning regulations in all other respects other than minimum lot width, including floor area ratio, side yards and height requirements; and

WHEREAS, the applicant has submitted photographs of other residences in the area, along with a 400'-0" radius map; such documentation reflects that the surrounding neighborhood is characterized by residences ranging from one to two and one-half stories; and

WHEREAS, further, the Board notes that the adjacent homes to the east of the site are built on 25'-0" wide lots, and other homes in the area are built on lots with frontages of 20'-0" or less; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board notes that the owner's predecessor in title created the subject lot prior to the rezoning in 2003, and at the time of such subdivision (1980), the lot complied with the lot width requirements; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, because the only requested waiver is for minimum lot width, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR §72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the

Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 72-21, to permit the proposed construction of a two-story, single-family residence, located in an R1-2 zoning district, which does not comply with the zoning requirements for minimum lot width, contrary to ZR § 23-32; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 29, 2005"-(7) sheets; and *on further condition*;

THAT there shall be a maximum F.A.R. of 0.5;

THAT the above-stated condition shall appear on the Certificate of Occupancy;

THAT except for minimum lot width, the subject lot shall comply with all R1-2 zoning district requirements, as reviewed and approved by DOB;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2005.

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180-05-BZ

CEQR #05-BSA-008M

APPLICANT – Wachtel & Masyr for 1511 Third Avenue Association/Related/Equinox, owner.

SUBJECT – Application August 4, 2005 – Special Permit under Z.R. §§73-03 and 73-367 approval sought for the legalization of a physical culture establishment located on the entire second floor portion of the third floor and the entire fourth floor with a total of 34, 125sq.ft. of floor area. The site is located in a C2-8 zoning district.

PREMISES AFFECTED – 1511 Third Avenue aka 201 East 85th Street, northeast corner of 85th Street and Third Avenue, Block 1531, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ellen Hay.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 1, 2005, acting on Department of Buildings Application No. 103869182, reads, in pertinent part:

“Proposed Physical Culture Establishment is not permitted as of right in C2-8A zoning district. This is contrary to section 32-10 ZR”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit on a site partially within a C2-8A zoning district and partially within an R8B zoning district, the legalization of a physical culture establishment (“PCE”) located on all floors of a four-floor plus mezzanine and basement commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 7, 2006, after due notice by publication in *The City Record*, and then to decision on February 28, 2006; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the New York City Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject tax lot (lot 1) is a corner lot with approximately 77 feet, 6 inches of frontage on Third Avenue and 125 feet of frontage on East 85th Street, with approximately 100 feet of frontage within the C2-8A zoning district and the remainder within the R8B zoning district; and

WHEREAS, lot 1 is part of a newly created larger zoning lot, consisting of lot 1 and the lots to the north of the site, designated lots 4, 48, 47, 46, 45, 43, and 6 (the “ZL”); and

WHEREAS, lot 1 is improved upon with a four-story plus mezzanine and basement commercial building; and

WHEREAS, this building is currently occupied by a retail

clothing store on the first floor and mezzanine, and by the subject PCE (an Equinox Gym), primarily on the second and parts of the third and fourth floors (the PCE entrance is on the first floor); and

WHEREAS, the site and the PCE have been the subject of six prior BSA actions; and

WHEREAS, under Calendar No. 34-96-BZ, an application for a special permit pursuant to ZR § 73-36 was made in order to legalize the subject PCE; this application was converted to a variance and subsequently denied; and

WHEREAS, under Calendar No. 119-99-A, an administrative appeal, the appellant (an adjacent property owner), sought a revocation of Department of Buildings (“DOB”) permit that legalized the construction of a rear yard encroachment on the second, third, and fourth floors of the subject building; this appeal was granted, with the Board finding that the rear yard encroachment could not be considered a permitted rear yard obstruction as defined in ZR § 33-23(b); and

WHEREAS, under Calendar No. 332-01-BZ, which was an second application for a special permit under ZR § 73-36, the applicant proposed to rectify the unlawful enlargement of the PCE on the third and fourth floors through an arrangement that purported to provide separation between a proposed community facility tenant (the “CF”) and the subject PCE; this application was denied by the Board; and

WHEREAS, while the public hearing process of Calendar No. 332-01-BZ was proceeding, the Board also heard an application made under Calendar No. 139-02-A, an administrative appeal of an April 17, 2002 DOB determination declining to seek a revocation or modification of Certificate of Occupancy Number 107549, issued on July 7, 1995 to the subject building; and

WHEREAS, the appellant (again the neighbor) in 139-02-A contended that the presence of the PCE in the subject building constituted a non-conforming use subject to the lapse provisions of ZR § 52-60 et. seq.; and

WHEREAS, upon a review of the record and of the definition of non-conforming use as set forth at ZR § 12-10, the Board found that, with the exception of the 4,400 square feet addition constructed after the 1995 Certificate of Occupancy was issued, the subject building’s excess commercial floor area did not constitute a non-conforming use, but was rather a lawful non-complying condition with regard to the commercial floor area as per ZR § 33-12; and

WHEREAS, after dispensing with the substance of the appeal, the Board also concluded that the Certificate of Occupancy for the building needed modification to provide an adequate representation of permitted uses; and

WHEREAS, in its resolution issued under Calendar No. 139-02-A on December 10, 2002, the Board set forth such a modification; and

WHEREAS, certain conditions in this resolution read as follows: “That commercial usage in the subject building shall be limited to the pre-existing, legally non-complying 30,340 square feet of area; That any additional floor area other than aforementioned 30,340 square feet and in particular, the 4,400

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square foot infill addition, shall be built and used in compliance and conformance with all underlying zoning regulations.”; and

WHEREAS, in 2003, an application was made under the subject calendar number for a special permit pursuant to ZR § 73-36; the application again sought approval to legalize the existing PCE; and

WHEREAS, on December 9, 2004, the Board denied the special permit application; and

WHEREAS, in denying the application, the Board found that the proposed egress path for the occupants of the CF was not compliant with the Building Code; and

WHEREAS, because of this potentially dangerous egress path, the Board determined that the finding set forth at ZR § 73-36 (1) - specifically, that there would be no impairment on the use of an adjacent area due to the grant of the special permit - had not been met; and

WHEREAS, also because of this potentially dangerous egress path, the Board determined that one of the general findings applicable to all special permit applications, set forth at ZR § 73-03(a) – specifically, that the hazards or disadvantages of the proposed special permit use are outweighed by the advantages to be derived by the community by the grant of the special permit – had not been met; and

WHEREAS, additionally, the Board noted that the applicant appeared to have engaged in a pattern of misrepresentation in the subject application, insofar as it had: supplied the Board with contradictory information concerning the available legal commercial floor area, failed to remove a rear yard obstruction in its entirety as it promised and as it was ordered to do, and failed to adequately address the concerns of the Board as to the creation of a completely separate community facility space; and

WHEREAS, subsequently, in 2005, an application was made under the subject calendar number pursuant to Section 1-10(e) of the Board’s Rules of Practice and Procedure for a re-hearing of the special permit application previously denied by the Board in 2003, as well as an application for a potential technical amendment to the condition as to maximum commercial floor area imposed by the Board in the previously decided appeals case; and

WHEREAS, a new applicant, unrelated to the applicant in the past cases, contended that the changes to the third and fourth floor plan and the egress path, as well as the discovery of new plans from 1930 showing that the second floor was not a full floor as previously thought, constituted substantial new evidence sufficient to allow the matter to be re-opened; and

WHEREAS, the Board agreed, finding that the material changes to the plans and the new evidence, as noted above, were sufficient to warrant a re-opening of the special permit application for legalization of the subject PCE; and

WHEREAS, the applicant also asked for a re-opening of BSA Cal. No. 139-02-A, for the sole purpose of amending the condition language concerning the amount of available commercial floor area within the building, based upon a new evaluation of said floor area by a new architect; and

WHEREAS, the Board ultimately dismissed this

application as moot, since it was deemed premature; specifically, the Board stated that if the available commercial floor area is confirmed by the Board, then the floor area conditions set forth in the resolution for 139-02-A can be modified in the interest of good record keeping, on the Board’s own authority, at a later date; and

WHEREAS, in the instant case, the applicant maintains that the amount of lawful non-complying commercial floor area ascribed to the subject lot is 34,127 sq. ft., and has submitted revised floor area calculations based upon its new review of the building and the available plans; said calculations are undisputed; and

WHEREAS, additionally, the applicant has provided the Board with a DOB reconsideration that allows the transfer of additional lawful non-complying commercial floor area to the subject lot from lot 45 (which is part of the ZL), which increases the total commercial floor area of the building to 36,461 sq. ft.; and

WHEREAS, 26,666 sq. ft. of this commercial floor area will be occupied by the PCE: 569 sq. ft. on the first floor; 149 sq. ft. on the mezzanine; 9,393 sq. ft. on the second floor; 9,090 on the third floor; and 7,465 on the fourth floor; and

WHEREAS, the applicant states that the subject PCE shares some common areas with the CF (the CF will be located primarily on the fourth floor); the floor area of said common areas was divided between the PCE and the CF; and

WHEREAS, as to the unacceptable egress route for the CF identified in the prior case, the applicant has provided the Board with a sign-off from DOB indicating that the revised egress route now complies with the Building Code; and

WHEREAS, accordingly, for purposes of this application, the Board finds that the applicant has adequately addressed the floor area and egress issues, as well as the procedural history of the application; and

WHEREAS, at hearing, the Board asked the applicant to address the small rear yard extension located on the north side of the building, located partially within the R8B portion of the lot and constructed after 1974; and

WHEREAS, the applicant stated that the extension complied with applicable yard regulations, as it is a permitted obstruction; and

WHEREAS, however, the Board will defer the accuracy of this representation to DOB, through a condition, as set forth below, and should it be determined that it is not a permitted obstruction, it should be removed or modified so that it does comply with the permitted obstruction regulations; and

WHEREAS, having resolved these issues, the applicant asks the Board to legalize the PCE on the basis that the relevant findings set forth at ZR § 73-36 are met; and

WHEREAS, the applicant represents that the PCE will provide gym equipment, aerobics, other classes in physical improvement and massage services by licensed massage professionals; and

WHEREAS, the applicant states that an approved

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interior fire alarm system will be installed in the entire PCE space, with the addition of smoke detectors, manual pull stations, local audible and visual alarms, and be connected to a FDNY-approved Central Station; and

WHEREAS, the PCE will have the following hours of operation: Monday through Thursday 5:30AM to 11PM, Friday 5:30AM to 10PM, and Saturday and Sunday 8AM to 9PM; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement 06-BSA-008M, dated August 4, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and

73-03, to permit on a site partially within a C2-8A zoning district and partially within an R8B zoning district, the legalization of a physical culture establishment with a total floor area of 26,666 sq. ft., located on all floors of a four-floor plus mezzanine and basement commercial building, , contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received February 14, 2006"-(5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, from February 28, 2006 to February 28, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday 5:30AM to 11PM, Friday 5:30AM to 10PM, and Saturday and Sunday 8AM to 9PM;

THAT all massages shall be performed only by practitioners with valid and current NYS massage licenses;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained within one year from the date of this grant;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans and approved by DOB;

THAT DOB shall review the rear yard encroachment as shown on the BSA-approved plans and confirm that it is a permitted obstruction in the R8B district portion of the lot;

THAT the owner shall take appropriate remedial action, as directed by DOB, if DOB determines that the encroachment is unlawful;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

329-05-BZ
CEQR #06-BSA-031R
APPLICANT – Wireless EDGE Consultants, LLC, for NYC

Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and

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Health and Hospital Corporation, owner.

SUBJECT – Application November 15, 2005 – Under Z.R. §73-30 – Proposed Multiple Carrier Monopole is contrary to Z.R. §22-00 and therefore not allowable within the R3-2 district (Special Natural Area – NA1).

PREMISES AFFECTED – 460 Brielle Avenue, between Brielle Avenue and Rockland Avenue, Block 955, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: John Arthur.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated February 13, 2006, acting on Department of Buildings Application No. 500786955, reads in pertinent part:

“Under ZR Section 73-30 proposed multiple carrier monopole [is] contrary to ZR Section 22-00 and therefore not allowable within an R3-2 district (Special Natural Area-NA1).”; and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit the proposed construction of a non-accessory radio tower for public utility wireless communications, within an R3-2(NA1) zoning district, which is contrary to ZR §§ 22-00; and

WHEREAS a public hearing was held on this application on February 14, 2006 after due notice by publication in *The City Record*, and then to decision on February 28, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 2, Staten Island, states that it has no objections to the subject application; and

WHEREAS, an area resident appeared in opposition to this application; and

WHEREAS, the proposed monopole will be located on the grounds of the Sea View Hospital Center and Home (a New York City designated landmark), in a remote wooded area at the edge of the grounds; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a 145-foot high monopole, which can accommodate up to six wireless service providers simultaneously; and

WHEREAS, the proposed monopole will be a stealth design, painted grey to blend in with the surrounding trees and sky; and

WHEREAS, the monopole was approved by the Landmarks Preservation Commission, through a Binding Report dated July 19, 2005; and

WHEREAS, additionally, the New York State Historic Preservation Office issued a determination of “No Adverse

Effect” as to the proposed monopole on July 11, 2005; and

WHEREAS, finally, the height of the pole and its location within a steep slope area will be approved through authorizations from the City Planning Commission; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.”; and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, specifically, the applicant states that the pole will not be visible from the Hospital campus; and

WHEREAS, the applicant also states that related equipment cabinets will be installed within a gated and locked fence enclosure, and notes further that the general public is not allowed on the Hospital grounds; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.06-BSA-031R, dated November 14, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

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Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR §73-03 and §73-30, to permit the proposed construction of a non-accessory radio tower for public utility wireless communications, within an R3-2(NA1) zoning district, which is contrary to ZR §§ 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received November 15, 2005"-(4) sheets; and *on further condition*;

THAT any fencing and landscaping will be maintained in accordance with BSA approved plans;

THAT no building permit shall be issued unless authorizations are obtained from the City Planning Commission for the proposed height and location in a slope area;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2006.

146-04-BZ

APPLICANT – Joseph Margolis for Jon Wong, Owner.
SUBJECT – Application April 5, 2006 – pursuant to Z.R. §72-21 – to allow the residential conversion of an existing

manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Joseph Margolis, Raymond Chan, Naima Hasan, John Guzzo and Grace Petrone.

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for continued hearing.

229-04-BZ

APPLICANT – Eric Palatnik, P.C., for Absolute Power & Fitness Center, Inc., owner.

SUBJECT – Application June 16, 2004 – under Z.R. §72-21 – the legalization of an existing physical cultural establishment, occupying approximately 8000 square feet of floor area spread over two stories, located in an R-5 (OPSD) zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 202/04 Caton Avenue, between East 2nd and East 3rd Streets, Block 5325, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

260-04-BZ

APPLICANT - The Law Office of Fredrick A. Becker, for Leewall Realty by Nathan Indig, owner.

SUBJECT – Application July 20, 2004 – under Z.R. §72-21 to permit the proposed construction of a four story, penthouse and cellar three-family dwelling, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 222 Wallabout Street, 64' west of Lee Avenue, Block 2263, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to May 9, 2006, at 1:30 P.M., for adjourned hearing.

262-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tishrey-38 LLC by Malka Silberstein, owner.

SUBJECT – Application July 22, 2004 – under Z.R. §72-21, to

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permit the proposed construction of a four story, penthouse and cellar four-family dwelling, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED - 218 Wallabout Street, 94' west of Lee Avenue, Block 2263, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to May 9, 2006, at 1:30 P.M., for adjourned hearing.

373-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Brendan McCartan, owner.

SUBJECT – Application November 26, 2004 – under Z.R. §72-21 in an R4 district, permission sought to allow the construction of a two-story one-family dwelling on a 25' x 53.55' lot consisting of 1,338 SF. The structure does not comply with floor area allowed, open space, lot area, front yard.

PREMISES AFFECTED – 57-69 69th Street, north side of 69th Street 24' west of 60th Avenue, Block 2830, Lot 33, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to April 11, 2006, at 1:30 P.M., for decision, hearing closed.

26-05-BZ

APPLICANT – Cozen O'Connor, for Tikvah Realty, LLC, owner.

SUBJECT – Application February 11, 2005 - under Z.R. §72-21 to permit the proposed bulk variance, to facilitate the new construction of an 89 room hotel on floors 4-6, catering facility on floors 1-3, ground floor retail and three levels of underground parking, which creates non-compliance with regards to floor area, rear yard, interior lot, permitted obstructions in the rear yard, setback, sky exposure plane, loading berths and accessory off-street parking spaces, is contrary to Z.R. §33-122, §33-26, §33-432, §36-21, §33-23 and §36-62.

PREMISES AFFECTED - 1702/28 East 9th Street, a/k/a 815 Kings Highway, west side, between Kings Highway and Quentin Road, Block 6665, Lots 7, 12 and 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Howard Hornstein, Barbara Hair and Karl Fischer.

For Opposition: Yosef Ozeiry, Eli Sultan, David Ozelrey and Chaim Weinberg.

ACTION OF THE BOARD – Laid over to February 28, 2006, at 1:30 P.M., for adjourned hearing.

128-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yisroel Y. Leshkowitz & Esther S. Leshkowitz, owner.

SUBJECT – Application May 24, 2005 – under Z.R. §73-622 – to permit the proposed enlargement of an existing single family residence, located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and rear yard, is contrary to Z.R. §23-141, §23-461 and §23-47.

PREMISES AFFECTED – 1406 East 21st Street, between Avenue “L” and “M”, Block 7638, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteirman.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 1:30 P.M., for continued hearing.

187-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Salvatore Porretta and Vincenza Porretto, owners.

SUBJECT – Application August 9, 2005 – under Z.R. §72-21– Propose to build a two family dwelling that will comply with all zoning requirements with the exception of two non-complying side yards and undersized lot area due to a pre-existing condition.

PREMISES AFFECTED – 78-20 67th Road, Southerly side of 67th Road, 170' easterly of 78th Street, Block 3777, Lot 17, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to March 28, 2006, at 1:30 P.M., for decision, hearing closed.

289-05-BZ

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, owner.

SUBJECT – Application September 19, 2005 – under Z.R. §73-50 – to waive Z.R. §33-292 – waiving the require 30 foot

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open area at the rear of premises.

PREMISES AFFECTED – 1106-1108 Utica Avenue,
between Beverly and Clarendon Roads, Block 4760, Lot 15,
Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Eric Palatnik, Paul Duke, Bishop Garnes,
Pastor Martin J. DeSivla, Pat Taylor, LeRoy Woods, Deborah
Woods, Emilia Moffatt, Michael A. Norris, Maureen
McDonald, Sharon Zigler, Joyce Nicholas and Delicia
Garnes.

ACTION OF THE BOARD – Laid over to April 4,
2006, at 1:30 P.M., for continued hearing.

321-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Little Neck
Commons, LLC, owner; Dunkin Donuts, lessee.

SUBJECT – Application November 2, 2005 – under Z.R.
§73-243 – requesting a Special Permit in order to legalize an
existing accessory drive-through window in an as-of-right
eating and drinking establishment.

PREMISES AFFECT – 245-02 Horace Harding Expressway,
South side of Horace Harding Expressway, west of the
intersection with Marathon Parkway, Block 8276, Lot 100,
Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Josh Rinesmith and Ayiesha Selwanes.

ACTION OF THE BOARD – Laid over to April 11,
2006, at 1:30 P.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: 5:00 P.M.

BULLETIN

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March 16, 2006

DIRECTORY

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SATISH BABBAR, *Vice-Chair*

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CHRISTOPHER COLLINS

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Tuesday, March 7, 2006**

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DOCKETS

New Case Filed Up to March 7, 2006

34-06-A

41-23 156 Street, East side of 156 Street 269' north east of Sanford Avenue, Block 5329, Lot 15, Borough of **Queens, Community Board: 7**. General City Law Section 35-To develop a three family, three-story residence with accessory three car garage.

35-06-A

9 Doris, N/S 261.92 W/O Mapped Beach 201st Street, Block 16350, Lot 400, Borough of **Queens, Community Board: 14**.

36-06-BZ

2125 Utica Avenue, East side of Utica Avenue between Avenue M and Avenue N, Block 7875, Lot 20, Borough of **Brooklyn, Community Board: 18**. (SPECIAL PERMIT)-73-53-To permit the enlargement of a manufacturing use in a residential ZD.

37-06-BZ

180 Lafayette Street, East side of Lafayette Street between Grand and Broome Streets, Block 473, Lot 43, Borough of **Manhattan, Community Board: 2**. (SPECIAL PERMIT)-73-36-To permit the proposed PCE within the first floor and cellar levels of the 7-story building.

38-06-BZ

325 Avenue Y, N/S of Avenue Y, 100 ft. west of intersection ith West 3rd Street, Block 7192, Lot 45, Borough of **Brooklyn, Community Board: 15**. Under 72-21-To permit mixed use building (residential/commercial/community facility) with in ZD, contrary to the applicable (Use) regulations.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

APRIL 25, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 25, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

265-59-BZ

APPLICANT – Martyn & Don Weston, for 11 College Place, Inc., owner.
SUBJECT – Application December 12, 2005 - Extension of term for a variance to permit an eight car garage located in a residential building. The premise is located in an R7-1/LH-1 zoning district.
PREMISES AFFECTED – 11 College Place, west side 89’-6” north of Love Lane, Block 236, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #2BK

APRIL 25, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 25, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

351-04-BZ

APPLICANT - The Agusta Group, for Stahva Realty, owner.
SUBJECT – Application November 1, 2004 - under Z.R.§73-44 – to allow parking reduction for proposed enlargement of existing office building located in an R6B/C2-2.
PREMISES AFFECTED - 210-08/12 Northern Boulevard, thru lot between Northern Boulevard and 45th Road, 150’ east of 211th Street, Block 7309, Lots 21 and 23 (Tentative Lot 21), Borough of Queens.
COMMUNITY BOARD #11Q

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.

SUBJECT – Application December 22, 2005 - Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to ZR §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APRIL 26, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Wednesday morning, April 26, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL HEARING

334-05-BZ

APPLICANT – Kramer Levin Naftalis & Frank, LLP, for The Whitney Museum of American Art, owner.
SUBJECT – Application November 23, 2005 - Zoning Variance (use & bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the expansion of an existing museum complex including the construction a nine (9) story structure located in C5-1(MP) and R8B (LH-1A) zoning districts. The proposed variance would allow modifications of zoning requirements for street wall height, street wall recess, height and setback, mandatory use, and sidewalk tree regulations; contrary to ZR § § 24-591, 99-03, 99-051, 99-052, 99-054, 99-06.
PREMISES AFFECTED – 933-945 Madison Avenue, 31-33 East 74th Street, East side of Madison Avenue between East 74th and East 75th Streets, Block 1389, Lots 21, 22, 23, 24, 25, 50, Borough of Manhattan.
COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, MARCH 7, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meeting of the Board held on Tuesday morning and afternoon December 20, 2005, as printed in the bulletin of December 29, 2005, Vol. 90, No. 52. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

645-59-BZ

APPLICANT – Vassalotti Associate Architects, LLP., for Cumberland Farms, Inc., owner.

SUBJECT – Application July 12, 2005 – Extension of Term of a Variance for an additional 10 years for the existing gasoline service station with accessory convenience store which expired on October 7, 2005. The premise is located in a C2-1 in an R5 zoning district.

PREMISES AFFECTED – 10824 Flatlands Avenue, Block 8235, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 28, 2006, at 10 A.M., for decision, hearing closed.

240-90-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Keil Brothers, Inc., owner.

SUBJECT – Application September 20, 2005 – Extension of Term/Amendment of variance of an Agricultural Nursery and Truck Garden which expires on May 14, 2006. It is requested to extend the term from a 10 year term to a 20 year term and to amend to allow overnight parking for 10 vehicles.

PREMISES AFFECTED – 210-12 48th Avenue, 210th Street and 48th Avenue, Block 7369, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 28, 2006, at 10 A.M., for decision, hearing closed.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Samuel H. Valencia – Valencia Enterprise, owner

SUBJECT – Application July 20, 2005 – Reopening for an Extension of Term/Waiver for an eating and drinking establishment, with dancing, which expired on March 7, 2004, located on the first floor of a three story mixed use building with residences on the upper floors. The premise is located in a C2-2 in an R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side of Roosevelt Avenue, 125.53' East of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Samuel H. Valencia.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 28, 2006, at 10 A.M., for decision, hearing closed.

173-94-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Richard Shelala, owner; Compass Forwarding Co., Inc., lessee.

SUBJECT – Application July 25, 2005 – Reopening for an amendment of variance to permit the change in hours of operation of a freight transfer facility. The premise is located in a C2-2(R3-2) zoning district.

PREMISES AFFECTED – 159-15 Rockaway Boulevard a/k/a 165-10 144th Road, southeast corner of Rockaway Boulevard and 144th Road, Block 1327, Lot 17, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam Rothkrug and Robert Shelala.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 10 A.M., for continued hearing.

136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel-Net Holding, Inc., owner.

SUBJECT – Application November 23, 2005 – Reopening for an amendment to the resolution to extend the time to complete construction which expires June 11, 2006.

PREMISES AFFECTED – 11-11 44th Drive, north side between 11th and 21st Street, Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

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Negative:.....0
ACTION OF THE BOARD – Laid over to March 28, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

231-04-A

APPLICANT – Joseph P. Morsellino, Esq., for Chri Babatsikos and Andrew Babatsikos, owners.
SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.
PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243rd Street, Block 8103, Lot 5, Borough of Queens.
COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Joseph Morsellino.

ACTION OF THE BOARD – Laid over to April 4, 2006, at 10 A.M., for deferred decision.

144-05-BZY

APPLICANT – Alfonso Duarte, for Bel Homes, LLC, owner.
SUBJECT – Application June 9, 2005 – Proposed extension of time to complete construction pursuant to Z.R. 11-331 for two-two family attached dwellings.

PREMISES AFFECTED – 143-53/55 Poplar Avenue, northwest corner of Parsons Boulevard, and Poplar Avenue, Block 5228, Lots 32 and 34, Flushing, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 10 A.M., for adjourned hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: 10:40 A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 7, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar,

Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

202-04-BZ

APPLICANT – Einbinder & Dunn, LLP, for 202 Meserole, LLC, owner.

SUBJECT – Application May 24, 2004 – under Z.R. §72-21– to permit the proposed conversion of a vacant industrial building, into a 17 unit multiple dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.
PREMISES AFFECTED – 100 Jewel Street, southeast corner of Meserole Street, Block 2626, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

Adopted by the Board of Standards and Appeals, March 7, 2006.

150-05-BZ

CEQR #05-BSA-139K

APPLICANT – Henry & Dooley Architects, P.C., for Doris Porter, owner; Cynthia Small, lessee.

SUBJECT – Application June 16, 2005 – under Z.R. §73-36 approval sought for a proposed physical cultural establishment located on the second and third floor in a mixed-use building. The PCE use will contain 2, 006 square feet. The site is located in a C2-3/R-6 Zoning District.

PREMISES AFFECTED – 1426 Fulton Street, between Kingston and Brooklyn Avenue, Block 1863, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 4, 2005, acting on Department of Buildings Application No. 301897918, reads, in pertinent part:

“Proposed physical culture establishment is permitted in zoning district C2-3/R6 only by special permit under Section....73-36 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§73-36

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and 73-03, to permit, within a C2-3 (R6) zoning district, a proposed physical culture establishment (“PCE”) to be located on the second and third floors of an existing three-story building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 6, 2005, after due notice by publication in *The City Record*, and with a continued hearing on January 31, 2006 and then to decision on March 7, 2006; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 3, Brooklyn, recommends approval of this application; and

WHEREAS, the New York City Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the south side of Fulton Street, 40 ft. east of Brooklyn Avenue, and has a lot area of 2,000 sq. ft.; and

WHEREAS, the subject PCE will occupy 1,003 sq. ft. on each of the second and third floors; and

WHEREAS, the applicant represents that the PCE will provide massage services by licensed massage professionals; and

WHEREAS, the applicant states that an approved interior fire alarm system will be installed in the entire PCE space on the second and third floors, with the addition of smoke detectors, manual pull stations, local audible and visual alarms, and be connected to a FDNY-approved Central Station; and

WHEREAS, at hearing, the Board questioned the applicant as to the permissibility of having commercial uses on the second and third floors of the building in the subject zoning district; and

WHEREAS, the architect represented that the commercial floor area in the building is within the allowable FAR for the subject zoning district, and that the entire building could be occupied commercially under the district and pursuant to the certificate of occupancy; and

WHEREAS, the PCE will have the following hours of operation: Monday through Saturday, 10:00 AM to 7:00 PM; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the

community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement 05-BSA-139K, dated October 28, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C2-3 (R6) zoning district, a proposed physical culture establishment to be located on the second and third floors of a three-story building; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received March 6, 2006”-(3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on March 7, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Saturday, 10:00AM to 7:00PM;

THAT all massages shall be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT DOB shall ensure compliance with total FAR and supplemental use provisions;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as

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set forth on the BSA-approved plans and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 7, 2006.

322-05-BZ

CEQR #06-BSA-029Q

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, c/o Warren Hecht, Esq., contract vendee.

SUBJECT – Application November 4, 2005 – Under Z.R. §72-21 to permit the enlargement of an existing single family home and to change the use from residential to community facility. The enlargement is contrary to ZR §24-34 (rear yard) 24-35 (side yard) and 24-521 (sky exposure plane). The premise is located in an R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Northeast corner of Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 24, 2005, acting on Department of Buildings Application No. 402213993, reads:

- “1. Section 24-34: Two front yards at 15 ft. are required. Only one complies; the other is deficient.
2. Section 24-35: Two side yards at 8 ft. are required. There is only one side yard.
3. Section 24-521: As a result of the deficient front yard, the building is outside of the sky exposure plane envelope.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4B zoning district, the proposed enlargement of an existing two-story plus cellar single family home, to be used by a community facility center, which requires various bulk waivers related to side yards, front yards, and sky exposure plane, contrary to ZR §§ 24-34, 24-35, and 24-521; and

WHEREAS, a public hearing was held on this application on February 7, 2006, after due notice by publication in *The City Record*, and then to decision on March 7, 2006; and

WHEREAS, this application is brought on behalf of the Queens Jewish Community Council, a not-for-profit entity (hereinafter, the “Council”); and

WHEREAS, Community Board 8, Queens, recommends conditional approval of this application; certain of these conditions are listed below; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, the site is located on the northeast corner of the intersection of Main Street and 70th Avenue, and has a total lot area of 2,525 sq. ft; and

WHEREAS, the site is currently improved upon with a 1,791.07 sq. ft. two-story plus cellar single family home (Use Group 2A), with a synagogue at the cellar level, as well as a detached one-story garage; and

WHEREAS, the building is proposed to be enlarged from 1,791.07 sq. ft. to 2,874.28 sq. ft.; and

WHEREAS, the allowable Floor Area Ratio (“FAR”) for a community facility on the site is 2.0 and the proposed FAR is 1.14; and

WHEREAS, the applicant proposes to enlarge and alter the existing building as follows: relocate entrance and add entrance ramp; add an elevator; and enlarge the existing cellar, first and second floors; and

WHEREAS, the applicant states that the following are the space needs of the Council, which are driven by increased demand for services: (1) cubicle spaces where clients can meet with advisors; (2) a conference room for larger groups or work sessions; (3) an expanded storage area for the food pantry; and (4) a new entrance served by a ramp; and

WHEREAS, construction of the new center as currently proposed will result in the following non-compliances: one front yard of 4’-11 1/2” (front yards of 15’-0” are required); one side yard of 0’ (side yards of 8’-0” are required); and a non-compliant sky exposure plane; and

WHEREAS, the applicant states that the following is a unique physical condition, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is a corner lot, with an existing non-compliant front yard and side yard, that does not accommodate a feasible as of right enlargement; and

WHEREAS, the applicant states that the corner location of the lot and the existing non-complying development result in yard requirements that constrain any feasible enlargement; and

WHEREAS, specifically, the applicant states that an enlargement built with complying side yards and front yards on all sides would be just seven feet in width and, therefore, unusable; and

WHEREAS, the applicant further states that the requested variances are necessary in order to utilize allowable floor area to

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accommodate the aforementioned space needs of the Council; and

WHEREAS, therefore, the Board finds that the cited unique physical condition creates practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR §72-21(b) since it is a not-for-profit organization and the enlargement will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the proposed overall height is the same and that a sizeable side yard is adjacent to the site to the north; and

WHEREAS, the applicant states that the site's location on a heavily-trafficked roadway, which is primarily commercial in nature, ensures that the proposed variation of the sky exposure plane will not detrimentally impact surrounding development; and

WHEREAS, the applicant states that the proposed structure will contain 2,874 sq. ft. of floor area, while 5,050 sq. ft. is permitted as of right within the underlying zoning district; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the Council relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.06-BSA-029Q, dated January 5, 2006; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved that the Board of Standards and

Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, within an R4B zoning district, the proposed enlargement of an existing two-story plus cellar single family home, which requires various bulk waivers related to side yards, front yards, and the sky exposure plane, contrary to ZR §§ 24-34, 24-35, and 24-521; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 4, 2005" – (3) sheets; "Received February 21, 2006" – (1) sheet and "Received March 3, 2006" – (3) sheets; and *on further condition*:

THAT all garbage containers will be stored in a concealed space;

THAT the aggregate dimensions of all signage related to the use on the premises will not exceed 6 sq. ft.;

THAT any change in ownership or use of the premises is subject to Board approval;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT LL 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

THAT the parameters of the proposed building shall be as follows: a community facility FAR of 1.14; a community facility floor area of 2,874.28 sq. ft.; lot coverage of 56.92%; side yards of 9'-2 3/4" and 0'; front yards of 19'-11 1/4" and 4'-11 1/2"; and no parking spaces;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 7, 2006.

194-04-BZ thru 199-04-BZ

APPLICANT – Agusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142'

MINUTES

west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179) Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178) Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177) Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176) Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175) Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES – None.

For Applicant: Mitchell Ross, Wayne Kruse, Nathan Roberts, Elizabeth Mondsez, Earl Alleney and Patrick Arene.

ACTION OF THE BOARD - Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

320-04-BZ

APPLICANT – Harold Weinberg, P.E., for Michael Reznikov, owner.

SUBJECT – Application September 20, 2004 – Proposed legalization of a Special Permit ZR §73-622 for a two-story and rear enlargement, to an existing one family dwelling, Use Group 1, located in an R3-1 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, open space and rear yard, is contrary to Z.R. §23-141, §23-47 and §54-31.

PREMISES AFFECTED – 229 Coleridge Street, east side, 220'-0" south of Oriental Boulevard, Block 8741, Lot 72, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

For Applicant: Harold Weinberg.

For Opposition: Judith Baron, Susan Klapper and Jerry Meyerberg.

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for continued hearing.

396-04-BZ

APPLICANT – Stroock & Stroock & Lavan, LLP, by Ross Moskowitz, Esq., for S. Squared, LLC, owner.

SUBJECT – Application December 21, 2004 – under Z.R. §72-21 to permit the Proposed construction of a thirteen story, mixed use building, located in a C6-2A, TMU zoning district, which does not comply with the zoning requirements for floor area, lot coverage, street walls, building height and tree planting, is contrary to Z.R. §111-104, §23-145, §35-24(c)(d) and §28-12.

PREMISES AFFECTED – 180 West Broadway, northwest

corner, between Leonard and Worth Streets, Block 179, Lots 28 and 32, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ross Moskowitz and Richard Metsky.

For Opposition: Bruce Ehrmann.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for decision, hearing closed.

5-05-BZ

APPLICANT – Sheldon Lobel, P.C., for S & J Real Estate, LLC, owner.

SUBJECT – Application January 14, 2005 – under Z.R. §73-53 – to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,499.2 square feet.

PREMISES AFFECTED – 59-25 Fresh Meadow Lane, east side, between Horace Harding Expressway and 59th Avenue, Block 6887, Lot 24, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for adjourned hearing.

47-05-BZ

APPLICANT – Fischbein Badillo Wagner Harding, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 – under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Geis, Howard Hornstein and Jack Freeman.

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for continued hearing.

66-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum Inc., owner.

SUBJECT – Application March 16, 2005 – Special Permit

MINUTES

filed Under Z.R. §§11-411 and 11-413 of the zoning resolution to request the reinstatement of an expired, pre-1961, variance, and to request authorization to legalize the change of use from a gasoline service station with accessory automotive repairs, to an automotive repair facility without the sale of gasoline, located in a C2-4/R7-1 zoning district. PREMISES AFFECTED – 1236 Prospect Avenue, southeast corner of Prospect Avenue and Home Street, Block 2693, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

108-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #74, the companion case, 109-05-BZ is Tax Lot #76 on the same zoning lot.

PREMISES AFFECTED – 224-22 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 13, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug

For Opposition: Judith Clarrington

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

109-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #76, the companion case, 108-05-BZ is Tax Lot #74 on the same zoning lot.

PREMISES AFFECTED – 224-26 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 76, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Judith Clarrington.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

124-05-BZ

APPLICANT – Greenberg Traurig LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.

SUBJECT – Application May 20, 2005 – under Z.R. §72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to ZR §35-00, 23-145, 35-52, 23-82, 13-143, 35-24, and 13-142(a).

PREMISES AFFECTED – 482 Greenwich Street, Block 7309, Lot 21 and 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 1:30 P.M., for continued hearing.

130-05-BZ

APPLICANT – Elise Wagner, Esq., Kramer Levin, for Hudson Island, LLC, owner.

SUBJECT – Application May 25, 2005 – under Z.R. §72-21 to permit the development of a mixed-use, nine-story building with ground level retail, and a small amount of community facility space, and approximately 25 residential units on the upper floors within an M1-5B zoning district.

PREMISES AFFECTED – 74-88 Avenue of the Americas, a/k/a 11-15 Thompson Street and 27-31 Grand Street, east side of Avenue of the Americas, between Grand and Canal Streets, Block 227, Lots 50, 52 and 56, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul Selver, Richard Cook, Jerome Haims.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for decision, hearing closed.

285-05-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Robert E. Benson, owner.

SUBJECT – Application September 13, 2005 – Pursuant to Section ZR §72-21 for a variance for the proposed enlargement of an existing one-family dwelling that will not provide the required front yard, ZR §23-45 and rear yard, ZR §23-47. The premise is located in an R1-2 (HS) Hillside Preservation District.

PREMISES AFFECTED – 34 Duncan Road, West side of Duncan Road 163' North of intersection with Theresa Place, Block 591, Lot 52, Borough of Staten Island.

COMMUNITY BOARD #1SI

MINUTES

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 28,
2006, at 1:30 P.M., for decision, hearing closed.

301-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Jeanette Impaglia,
owner.

SUBJECT – Application October 12, 2005 – Special Permit
Under §73-36 To permit the operation of a Physical Culture
Establishment on the second floor mezzanine of a building
located within a C6-3X.

PREMISES AFFECTED – 410 8th Avenue, located on the
East side of 8th Avenue between 30th and 31st Streets, Block
780, Lot 76, Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 28,
2006, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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March 24, 2006

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SATISH BABBAR, *Vice-Chair*

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CHRISTOPHER COLLINS

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194-05-BZ	5525 Amboy Road, Staten Island

DOCKETS

New Case Filed Up to March 14, 2006

39-06-BZ

245 Varet Street, North side 100' East of intersection of White Street & Varet Street, Block 3110, Lot 33, Borough of **Brooklyn, Community Board: 1**. Under 72-21-Proposed conversion of an existing manufacturing building (UG17) to legalized residential apartment on the second and third floors and manufacturing on the first floor (UG17D).

40-06-BZ

10 Hanover Square, Easterly block front of Hanover Square between Water Street and Pearl Street, Block 31, Lot 1, Borough of **Manhattan, Community Board: 1**. (SPECIAL PERMIT)73-36-To allow the operation of a PCE with membership limited to employees of Goldman Sachs and residents.

41-06-BZ

139-24 Booth Memorial Avenue, South side of Booth Memorial Avenue and west side of 141 Street, Block 6410, Lot 19,21,24,25,26,28..., Borough of **Queens, Community Board: 7**. Under 72-21-To permit the erection of an accessory group parking facility with roof-top parking which does not comply with height and setback, front yard, rear yard, side yard and lot coverage.

42-06-BZ

56-45 Main Street, West side of Main Street between 56th and Booth Memorial Avenues., Block 5165, Lot 1, Borough of **Queens, Community Board: 7**. Under 72021-To permit the erection of a five story 97,219 sf hospital facility which does not provide the required rear yard equivalent and sky exposure plane.

43-06-BZ

31-09 35th Avenue, Northerly side of 35th Avenue 80'10" east of 31st Street, Block 608, Lot 3.4, Borough of **Queens, Community Board: 1**. Under 72-21-To allow the enlargement of an existing church to meet the needs, as the structure is not adequate to provide proper facilities for the members, that relates to lot coverage, front wall height, front and side yards and parking.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

APRIL 25, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 25, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

265-59-BZ

APPLICANT – Martyn & Don Weston, for 11 College Place, Inc., owner.

SUBJECT – Application December 12, 2005 - Extension of term for a variance to permit an eight car garage located in a residential building. The premise is located in an R7-1/LH-1 zoning district.

PREMISES AFFECTED – 11 College Place, west side 89'-6" north of Love Lane, Block 236, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEALS CALENDAR

263-03-A

APPLICANT – John W. Carroll, Wolfson & Carroll, for Ben Bobker, owner.

SUBJECT – Application August 20, 2003 – An administrative appeal challenging the Department of Buildings' final determination dated August 13, 2003, in which the Department refused to revoke the certificate of occupancy, on the basis that the applicant had satisfied all objections regarding said premises.

PREMISES AFFECTED – 1638 Eighth Avenue, west side, 110-5' east of Prospect Avenue, Block 1112, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #7BK

361-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – December 19, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R.§110331 under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

361-05-A

APPLICANT – Greenberg & Traurig, LLP for Prospect

Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APRIL 25, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 25, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

351-04-BZ

APPLICANT - The Agusta Group, for Stahva Realty, owner.

SUBJECT – Application November 1, 2004 - under Z.R.§73-44 – to allow parking reduction for proposed enlargement of existing office building located in an R6B/C2-2.

PREMISES AFFECTED - 210-08/12 Northern Boulevard, thru lot between Northern Boulevard and 45th Road, 150' east of 211th Street, Block 7309, Lots 21 and 23 (Tentative Lot 21), Borough of Queens.

COMMUNITY BOARD #11Q

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.

SUBJECT – Application December 22, 2005 - Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to ZR §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

Jeff Mulligan, Executive Director

APRIL 26, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing,

CALENDAR

Wednesday morning, April 26, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL HEARING

334-05-BZ

APPLICANT – Kramer Levin Naftalis & Frank, LLP, for The Whitney Museum of American Art, owner.

SUBJECT – Application November 23, 2005 - Zoning Variance (use & bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the expansion of an existing museum complex including the construction a nine (9) story structure located in C5-1(MP) and R8B (LH-1A) zoning districts. The proposed variance would allow modifications of zoning requirements for street wall height, street wall recess, height and setback, mandatory use, and sidewalk tree regulations; contrary to ZR § § 24-591, 99-03, 99-051, 99-052, 99-054, 99-06.

PREMISES AFFECTED – 933-945 Madison Avenue, 31-33 East 74th Street, East side of Madison Avenue between East 74th and East 75th Streets, Block 1389, Lots 21, 22, 23, 24, 25, 50, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 14, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, January 10, 2006, were approved as printed in the Bulletin of January 19, 2006, Volume 91, Nos. 1-3.

SPECIAL ORDER CALENDAR

384-74-BZ

APPLICANT – Sheldon Lobel, P.C., for R. M. Property Management, Inc., owner.

SUBJECT – Application May 18, 2005 – Extension of Term of a public parking lot and an Amendment of a Variance Z.R. §72-21 to increase the number of parking spaces and to change the parking layout on site. The premise is located in an R4A zoning district.

PREMISES AFFECTED – 3120 Heath Avenue, southwest corner of Shradly Place, Block 3257, Lot 39, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening, an amendment to the previously granted variance, and an extension of term; and

WHEREAS, a public hearing was held on this application on December 6, 2005, after due notice by publication in *The City Record*, laid over to January 10, 2006, February 14, 2006 and then to decision on March 14, 2006; and

WHEREAS, Community Board No. 8, Bronx, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, the premises is located on the south side of Heath Avenue, west of Shradly Place; and

WHEREAS, the site is located within an R4-A zoning district and is improved upon with a parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 4, 1975 when, under the subject calendar number, the Board granted an application for the

subject lot to permit a public parking lot with 20 spaces; and

WHEREAS, subsequently, this grant has been amended and extended by the Board at various times; and

WHEREAS, most recently, on October 24, 1995, the Board granted an extension of term to expire on May 20, 2005; and

WHEREAS, in addition to a new extension of term, the applicant requests an increase in the number of parking spaces to 34, stating that this amount of spaces is needed to accommodate the amount of cars currently parking in the lot; and

WHEREAS, the Board, after reviewing the site plan, determined that it could only accommodate 27 parking spaces, based upon its lot area and the actual amount of space to be used for parking; and

WHEREAS, the applicant attempted to provide evidence that the 34 spaces were necessary based upon current leases, but upon further review, the Board determined that this evidence was unconvincing; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested extension of term and an increase in the amount of spaces to 27 appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on March 4, 1975, as subsequently extended, so that as amended this portion of the resolution shall read: “to permit the maintenance of a parking lot, with a maximum of 27 parking spaces, and to extend the term for ten years from May 20, 2005, to expire on May 20, 2015, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received February 22, 2006’–(6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on May 20, 2015;

THAT the lot shall contain a maximum of 27 parking spaces;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review and approve the layout of the parking lot;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 200946085)

Adopted by the Board of Standards and Appeals, March 14, 2006.

MINUTES

617-80-BZ

APPLICANT – Eric Palatnik, P.C., for J & S Simacha, Inc., owner.

SUBJECT – Application May 12, 2005 – Application for an extension of time to complete construction and obtain a certificate of occupancy.

PREMISES AFFECTED – 770/780 McDonald Avenue, west side 20’ south of Ditmas Avenue, Block 5394, Lots 1 and 11, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on February 28, 2006, after due notice by publication in *The City Record*, and then to decision on March 14, 2006; and

WHEREAS, the subject site is located on the west side of McDonald Avenue, south of Ditmas Avenue, and is within an M1-1 zoning district; and

WHEREAS, on December 9, 1980, the Board granted an application under the subject calendar number pursuant to ZR §§72-21 and 73-50, to permit the maintenance of an existing non-complying catering hall; and

WHEREAS, subsequently, under the subject calendar number, a number of site conditions were legalized, and the Board granted extensions of term twice, most recently on April 15, 2003 for a term of two years, expiring on April 15, 2005; and

WHEREAS, the resolution for the last extension required that a certificate of occupancy be obtained within two years of the date of the grant; and

WHEREAS, the applicant represents that due to unforeseen construction delays, construction has not been completed since the grant date; and

WHEREAS, however, the applicant represents that the owner is now able to resume and complete construction; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on April 15, 2003, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of two years from the date of this resolution, to expire on March 14, 2008; *on condition*:

THAT a new certificate of occupancy shall be obtained within two years from the date of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 300540029)

Adopted by the Board of Standards and Appeals, March 14, 2006.

1-95-BZ

APPLICANT – Francis Angelino, Esq., for 117 Seventh Avenue So. Property, LLP, owner, TSI Sheridan, Inc. d/b/a NY Sports Club, lessee.

SUBJECT – Application October 6, 2006 – Extension of Term/Waiver for a Physical Cultural Establishment located in a C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, corner of West 10th Street and Seventh Avenue South, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of the term of the previously granted special permit that expired on September 20, 2004; and

WHEREAS, a public hearing was held on this application on February 28, 2006, after due notice by publication in *The City Record*, and then to decision on March 14, 2006; and

WHEREAS, Community Board No. 2, Manhattan, supports this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the subject premises is located at the southeast corner of Seventh Avenue South and West Tenth Street; and

WHEREAS, on June 13, 1995, the Board granted a special permit application pursuant to ZR § 73-36, to permit, in a C4-5 zoning district, the use of the cellar and the second and third floors of the existing three-story commercial building as a physical culture establishment (“PCE”); and

WHEREAS, the instant application seeks to extend the term of the special permit for ten years; and

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WHEREAS, the Board finds that a ten-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated June 13, 1995, so that as amended this portion of the resolution shall read: "to grant an extension of the term of the special permit for a term of ten years; *on condition* that the use and operation of the PCE shall substantially conform to drawings as filed with this application, marked 'Received March 9, 2006'-(6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years from June 13, 2005, expiring June 13, 2015;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, March 14, 2006.

364-36-BZ, Vol. II

APPLICANT – Joseph P. Morsellino, for Dominick Tricarico & Est. of P. Tricarico, owner.

SUBJECT – Application July 13, 2005 – Extension of Term/Waiver of a Variance which expired on February 11, 2005 for an additional 15 year term of an automotive service station. The premise is located in a C1-4 and R6B zoning district.

PREMISES AFFECTED – 31-70 31st Street, 31st Street and Broadway, Block 589, Lot 67, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for adjourned hearing.

1888-61-BZ

APPLICANT – Alfonso Duarte, for Ali Amanolahi, owner.
SUBJECT – Application June 21, 2005 – Pursuant to Z.R. §11-412 for an Amendment to an eating and drinking establishment and catering hall for the further increase in floor area and the to legalize the existing increase in floor area, the separate entrance to the catering hall and the drive thru at the front entrance. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 93-10 23rd Avenue, southwest corner of 94th Street, Block 1087, Lot 1, Elmhurst, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for continued hearing.

374-71-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Evelyn DiBenedetto, owner; Star Toyota, lessee.

SUBJECT – Application filed pursuant to Z.R. §§72-01 and 72-22 for an extension of term of a variance permitting an automobile showroom with open display of new and used cars (UG16) in a C2-2 (R3-2) district. The application also seeks an amendment to permit accessory customer and employee parking in the previously unused vacant portion of the premises.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 6269, Lots 14 and 20, located on the North West corner of Northern Boulevard and the Clearview Expressway, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for adjourned hearing.

263-98-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Joseph Elegudin, owner.

SUBJECT – Application November 18, 2005 – Extension of time to complete construction pursuant to Special Permit Z.R. §73-622 for an enlargement of a single family home which expired on September 9, 2005; and for an amendment to the previously approved plans to add an elevator to the residence.

The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 118 Oxford Street, 115' south of intersection with Shore Boulevard, Block 8757, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to April 11, 2006, at 10 A.M., for decision, hearing closed.

43-99-BZ

APPLICANT – Windels Marx Lane and MittenDorf, LLP,

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for White Castle Systems, Inc., owner.
SUBJECT – Application November 22, 2005 – Extension of Term/Waiver/Amendment to a previously granted special permit for a drive-through facility accessory to an eating and drinking establishment for an additional term of five years. The amendment is to install and electronic amplification menu board. The premise is located in a C1-2 in an R-4 zoning district.

PREMISES AFFECTED – 38-02 Northern Boulevard, southwest corner formed by the intersection of Northern Boulevard, Block 1436, Lot 1, Flushing, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Jeanine Margiano and Oliver Eichorn.

ACTION OF THE BOARD – Laid over to May 25, 2006, at 10 A.M., for continued hearing.

165-02-BZ thru 190-02-BZ

APPLICANT – Stuart A. Klein, Esq./Steve Sinacori, Esq., for Park Side Estates, LLC., owner.

SUBJECT – Application March 31, 2005 – Reopening for an amendment to BSA resolution granted under calendar numbers 167-02-BZ, 169-02-BZ, 171-02-BZ, 173-02-BZ and 175-02-BZ. The application seeks to add 5 residential units to the overall development (encompassing lots 21 and 28) for a total of 37, increase the maximum wall height by 2'-0", and increase the number of underground parking spaces from 11 to 20, while remaining compliant with the FAR granted under the original variance, located in an M1-1 zoning district.

PREMISES AFFECTED – 143-147 Classon Avenue, a/k/a 380-388 Park Avenue and 149-159 Classon Avenue, southeast corner of Park and Classon Avenues, Block 1896, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Steven Sinacori.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to April 25, 2006, at 10 A.M., for decision, hearing closed.

148-03-BZ

APPLICANT – Francis R. Angelino, Esq., for North West Real Estate, LLC, owner.

SUBJECT – Application August 18, 2005 – Reopening for an amendment to a previously approved five story and penthouse mixed commercial and residential building to add a mezzanine in the residential penthouse, located in an M1-6 zoning district.

PREMISES AFFECTED – 111/13 West 28th Street, between Sixth and Seventh Avenues, 164'-4" west of Sixth Avenue, Block 804, Lots 1101-1105 (formerly 28 and 29), Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino and David W. Sinclair.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to April 4, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

189-05-A

APPLICANT – James Periconi for Olive Freud, Hudson Waterfront Associates, owners et al.

SUBJECT – Application filed on September 7, 2005 – An appeal challenging the Department of Building's issuance of Temporary Certificate of Occupancies for 240 Riverside Boulevard (Building A) before the completion of the roadway connection between 72nd Street and Riverside Boulevard.

PREMISES AFFECTED – 240 Riverside Boulevard, (Building A), Block 1171, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Administration: Janine Gaylard, Department of Buildings.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Manhattan Borough Commissioner, dated August 12, 2005 (the "Final Determination"); and

WHEREAS, a public hearing was held on this application on February 7, 2005 after due notice by publication in *The City Record*, and then to decision on March 14, 2006; and

WHEREAS, the Final Determination was issued in response to a request from the appellant that the Department of Buildings ("DOB") rescind two temporary certificates of occupancy (Nos. 101236002T001 and 101236002T002, collectively, the "TCOs") issued to a 31-story residential building ("Building A") at the subject premises; and

WHEREAS, as reflected in the Final Determination, the Manhattan Borough Commissioner denied this request because there was no basis to rescind the TCOs; and

WHEREAS, Building A is located within a planned general large-scale development of residential and commercial uses, comprised of 15 development parcels, facing Riverside Drive South (the "development"); and

WHEREAS, on October 26, 1992, the City Planning Commission ("CPC") approved certain special permits related to the development (the "special permits"); and

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WHEREAS, the CPC resolution approving the special permits states that the development must be constructed in accordance with plans set forth in the CPC resolution; that the development must include mitigation measures as set forth in the Final Environmental Impact Statement prepared for the development (the "FEIS"); and that the development would be allowed only after a restrictive declaration is recorded and filed; and

WHEREAS, CPC approved changes to the City Map in order to extend the existing street system into the development site, and to eliminate several streets in order to consolidate the development parcels, and also amended ZR Zoning Map 8c to allow for higher density at the development; and

WHEREAS, on December 17, 1992, the owner of the premises, as required by the special permits, entered into a restrictive declaration concerning the development, restricting its construction in a manner consistent with the special permits, the City Map change, and the rezoning; and

WHEREAS, on May 27, 1998, the City and the owner entered into a mapping agreement, in which the owner agreed to perform work "substantially in accordance with" the requirements set forth in a NYC Department of Transportation ("DOT") letter dated January 23, 1998; said mapping agreement was accepted by CPC on July 16, 1998; and

WHEREAS, DOB issued excavation, foundation and structural framing permits for Building A under Application No. 101236002 on July 1, 2002, and under Application Nos. 103177893 and 103173888 on August 1, 2002, and a builder's pavement plan permit on July 24, 2002 (collectively, the "DOB permits"); and

WHEREAS, in a prior appeal before the Board, brought under BSA Cal. No. 134-03-A, the appellant (the same appellant as in the instant appeal) claimed that the special permits and the mapping agreement contained a condition providing that the developer of the premises must undertake the work necessary to connect Riverside Boulevard to 72nd Street in conjunction with the construction of Building A, as well as close the off ramp from Riverside Drive to 72nd Street, and further claimed that DOB must ensure that construction of the road connection, and the ramp closure, occur simultaneously with the building construction; and

WHEREAS, on this basis, the appellant asked the Board to overturn DOB's refusal to revoke the DOB permits; and

WHEREAS, the Board denied the appeal on October 21, 2003, finding that DOB properly issued the DOB permits, and that there was no requirement in any of the above-mentioned agreements, special permits or related actions that the ramp be closed or the roadway be constructed prior to their issuance; and

WHEREAS, the Board's decision was challenged in an Article 78 proceeding; and

WHEREAS, while the litigation was being resolved, a major portion of the construction of Building A was completed, and DOB issued the subject TCOs; and

WHEREAS, the appellant now challenges DOB's issuance of the TCOs, based upon the following arguments:

(1) DOB failed to review the alleged traffic burden arising from the occupancy of Building A before closure of the ramp and connection of the roadway, as is allegedly required by Building Code Section 27-218 (which authorizes DOB to issue TCOs so long as the part of the premises covered by the TCO is deemed safe for occupancy); (2) DOB failed to determine that all permitted work is complete and that such work substantially complies with approved plans and all applicable law, as is allegedly required by Section 27-218; and (3) the BSA, in the prior appeal, stated that DOB should not issue a TCO for Building A prior to completion of the roadway connection; and

WHEREAS, as to the first argument, the appellant states that DOB's issuance of the TCOs was an abuse of its discretion in that DOB did not require any information as to when the roadway connection would be completed even though the TCOs allow residents to occupy Building A and also to allegedly park up to 144 cars; and

WHEREAS, Section 27-218 provides that DOB may issue a TCO for "a part or parts of a building before the entire work covered by the permit shall have been completed, provided that such part or parts may be occupied safely prior to completion of the building and will not endanger public safety, health or welfare"; and

WHEREAS, DOB disputes that 27-218 imposes any requirement upon it to assess environmental impacts such as potential traffic concerns; and

WHEREAS, DOB notes that upon issuing a TCO, it is only required to evaluate whether tenants may safely occupy a part of a building prior to full completion of all work; and

WHEREAS, the Board agrees with DOB: there is no requirement in Section 27-218 that would require DOB to research, or solicit data from the permit applicant about, potential parking and/or traffic impacts; and

WHEREAS, the Board notes that Section 27-218 solely addresses the safety, health and welfare of the occupants of the building parts that would be occupied under a TCO; and

WHEREAS, unlike a discretionary review agency such as the Board, DOB, when issuing permits or TCOs, is not required to evaluate the potential environmental impacts like traffic and parking that a proposal might generate; and

WHEREAS, finally, the Board observes that appellant makes no argument that Building A is not safe for occupancy; and

WHEREAS, accordingly, the Board finds that appellant's first argument is without merit; and

WHEREAS, as to the second argument, the appellant states that the owner of Building A will, in bad faith, pursue further TCOs without any intention of obtaining a final CO, and that DOB is complicit in this process, which is a further abrogation of DOB's responsibility under Section 27-218; and

WHEREAS, the appellant seems to imply that DOB must, upon issuing a TCO, make a determination that all work conforms to applicable laws, because the developer can not be trusted; and

WHEREAS, DOB responds that both the Building Code and the City Charter provide that a certification as to

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conformance with all applicable laws is not the standard for issuance of a TCO; instead, DOB has the discretion to issue a TCO upon finding that a building or part of a building is safe for occupancy though all work has not been completed; and

WHEREAS, again, the Board agrees with DOB, for the reason given; and

WHEREAS, accordingly, the Board finds that appellant's second argument is without merit; and

WHEREAS, as to the third argument, the appellant cites to various comments made by former commissioners on the record while Cal. No. 134-03-A was being heard; and

WHEREAS, the appellant argues that the comments should be taken as an expression of the Board's concern that no TCO be issued for Building A until the roadway connection was constructed; and

WHEREAS, however, the resolution issued for the Board's decision as to the prior appeal makes no mention of this alleged concern, nor does it prohibit the issuance of a TCO for Building A; and

WHEREAS, the Board observes that the resolution is the official return of the Board as to the substance of any matter before it; and

WHEREAS, the Board finds that that the individual comments of commissioners at hearing, especially when taken out of context or when tangentially related to the issue before it, should not be construed as binding orders upon DOB; and

WHEREAS, moreover, as correctly noted by counsel to the developer, the decision to issue a TCO is a power of the DOB Commissioner or Borough Commissioner; none of the comments cited by the appellant suggest that DOB could not exercise its authority to issue one; and

WHEREAS, further, with one exception, none of the comments concerned issuance of a TCO, but were rather addressed towards issuance of a final CO; and

WHEREAS, accordingly, the Board finds that appellant's third argument is without merit; and

WHEREAS, subsequent to the first hearing on the matter, the appellant submitted copies of the Mapping Agreement, the CPC Resolution granting the 1992 Special Permit, and portions of the FEIS; and

WHEREAS, the appellant states that the provided documents support the contention that DOB had the responsibility to ensure that the roadway connection would be completed in time to accommodate the traffic impacts that would result from the development at the subject premises; and

WHEREAS, DOB responded that none of the submitted documents require construction of the roadway connection prior to issuance of a TCO for Building A; and

WHEREAS, the Board has reviewed the documents and agrees that no such requirement is present in any of them; and

WHEREAS, nor does the Board find persuasive appellant's argument that such a requirement might not be explicitly imposed in such documents, but that it should be inferred nonetheless; and

WHEREAS, additionally, the Board notes DOB's submission into the record of a June 17, 2005 letter from CPC Commissioner Burden to DOB Commissioner

Lancaster, which states that the developer of Building A was free to file for a TCO, as it had satisfied obligations in the restrictive declaration; and

WHEREAS, the Board observes that no such letter would have been issued by CPC had that agency been concerned that any of the documents submitted by appellant prevented issuance of a TCO until the roadway connection was constructed; and

WHEREAS, accordingly, the Board finds that appellant's final argument is without merit; and

WHEREAS, the Board notes that the appellant, by letter dated February 28, 2006, asked the Board to delay decision until DOT approval of the roadway connection, which the appellant believes could occur sometime in the middle of 2006; and

WHEREAS, however, because the instant appeal is meritless, the Board sees no reason to delay its denial.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated August 12, 2005, refusing to rescind the subject TCOs, is hereby denied.

Adopted by the Board of Standards and Appeals, March 14, 2006.

198-05-A

APPLICANT – Sheldon Lobel, P.C., for Huyian Wu, owner.
SUBJECT – Application August 22, 2005 – Proposed construction and enlargement of an existing one family dwelling, not front on mapped street, is contrary to Section 36, Article 3 of the General City Law.

PREMISES AFFECTED – 6 Cornell Lane, a/k/a 43-06 Cornell Lane, Eastern side of Cornell Lane north of Northern Boulevard, Block 8129, Lot 135, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 10, 2005, acting on Department of Buildings Application No. 402142588, reads:

“Respectfully request for consideration for alteration of existing building (Obtain a new C of O) not fronting mapped street in Contrary to General City Law Section 36”; and

WHEREAS, a public hearing was held on this application on February 28, 2006 after due notice by publication in the *City Record*, and then to closure and decision on March 14, 2006; and

WHEREAS, by letter dated January 12, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 10, 2005, acting on Department of Buildings Application No. 402142588, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received March 3, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 14, 2006.

155-05-A

APPLICANT – Richard Kusack, neighbor; 81 East Third Street Realty, LLC., owner.

SUBJECT – Application filed on June 30, 2005 – for an appeal of the Department of Buildings decision dated May 27, 2005 rescinding its Notice of Intent to revoke the approvals and permit for Application No. 102579354 for a community facility (New York Law School) in that it allows violations of the Zoning Resolution and Building Code regarding bulk, light, air, and unpermitted obstructions in rear yards.

PREMISES AFFECTED – 81 East 3rd Street, Manhattan, Block 445, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 10 A.M., for adjourned hearing.

173-05-A

APPLICANT – Stuart Klein for Trevor Fray, owner.

SUBJECT – Application July 28, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 85-24 168th Place, west side of 168th Place, 200 feet south of the corner formed by the

intersection of 18th Place and Gothic Drive. Block 9851, Lot 47, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 10 A.M., for adjourned hearing.

317-05-A

APPLICANT – Kevin Shea, applicant. Woodcutters Realty Corp. Owner; Three on Third LLC, lessee.

SUBJECT – Application November 1, 2005 – Appeal challenging DOB's interpretation of various provisions of the Zoning Resolution relating to the construction of a 16 story mixed use building in an C6-1/R7-2 Zoning district, which violates Zoning Floor Area exclusions, height and setback, open space and use regulations.

PREMISES AFFECTED – 4 East 3rd Street, South east corner of East Third and the Bowery, Block 458, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Kevin Shea, Richard Kosher, Michael Rosen, Eden Ross Lipson, Melissz Baldock and Stephanie Thazer. For Opposition: Richard Born and Irv Gothbaum.

For Administration: Janine Gaylard, Department of Buildings.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: A.M.

REGULAR MEETING TUESDAY AFTERNOON, MARCH 14, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

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ZONING CALENDAR

289-04-BZ

CEQR #05-BSA-031M

APPLICANT – Sheldon Lobel, P.C., for Judo Associates, Inc., lessee.

SUBJECT – Application August 18, 2004 – under Z.R. §72-21 – to permit the proposed construction of a seven story mixed-use building, to contain commercial use on the ground floor, and residential use above, located within an M1-5B zoning district, which does permit residential use, is contrary to Z.R. §42-00 and §42-14.

PREMISES AFFECTED – 341 Canal Street, southeast corner of Greene Street, Block 229, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

Adopted by the Board of Standards and Appeals, March 14, 2006.

382-04-BZ

APPLICANT – Eric Palatnik, P.C., for Billy Ades, (Contract Vendee).

SUBJECT – Application December 6, 2004 – under Z.R. §73-622 – to permit the proposed enlargement of an existing single family dwelling, located in an R4 zoning district, which does not comply with the zoning requirements for floor area, lot coverage, open space and side yards, is contrary to Z.R. §23-141(b) and §23-461(a).

PREMISES AFFECTED – 2026 Avenue “T”, corner of Avenue “T” and East 21st Street, Block 7325, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 17, 2004, acting on Department of Buildings Application No. 301861466, reads, in pertinent part:

1. Proposed Plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 75%.
2. Proposed Plans are contrary to Z.R. 23-141(b) in that the proposed Open Space Ratio (OSR) is less than the minimum required 55%.

3. Proposed Plans are contrary to Z.R. 23-461(a) in that the proposed side yards are less than the total of 13’-0”.

4. Plans are contrary to Z.R. 23-141(b) in that the proposed Lot Coverage Ratio (LCR) exceeds the permitted 0.45”; and

WHEREAS, this is an application made under ZR §72-21 to permit, on a site within an R4 zoning district, the enlargement of an existing over-built, two-story plus attic and cellar, single-family dwelling, which will increase the degree of non-compliance as to Floor Area Ratio (FAR), and create new non-compliances as to lot coverage, Open Space Ratio (OSR) and aggregate width of side yards, contrary to ZR §§23-141(a) & (b) and 23-461(a); and

WHEREAS, the application was originally filed as a special permit for a home enlargement pursuant to ZR §73-622; as discussed further below, the Board found that the proposed enlargement was ineligible for this special permit and the applicant subsequently chose to amend the application to request a variance instead; and

WHEREAS, a public hearing was held on this application on July 12, 2005 after due publication in *The City Record*, with continued hearings on August 9, 2005, September 13, 2005, November 29, 2005, January 31, 2006, and then to decision on March 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board No. 15, Brooklyn, recommended approval of the initial special permit application, but did not issue a recommendation for the variance application; and

WHEREAS, the subject premises is located at the corner of Avenue T and East 21st Street, with dimensions of 44 ft. along Avenue T, and 60 ft. along East 21st Street, and a total lot area of 2,640 sq. ft.; and

WHEREAS, the site is improved upon with a two-story plus attic and cellar, single-family home, which fronts on East 21st Street; and

WHEREAS, the home features a recreation room, bathroom, utility room and storage rooms in the cellar (which is accessible through an interior staircase), a living room, kitchen, dining room and half-bathroom on the first floor, a master bedroom, two additional bedrooms, and two bathrooms on the second floor, and an office and another room in the attic; the garage is separated from the dwelling and is located in the southern side yard; and

WHEREAS, the home has a total non-complying floor area of 3,001 sq. ft. (FAR of 1.14), a complying lot coverage of 0.40, a complying open space of 1,582 sq. ft. (OSR of 60 percent); two complying side yards of 5’-2” on the west side and 12’-0” on the south side, and two complying front yards of 10’-1” on the north side and 10’-0” on the east side (because the lot is on a corner, no rear yards are required; instead, two side yards and two front yards are required); and

WHEREAS, the applicant proposes an enlargement at the south side of the home into the south side yard, which

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would result in the following increase in non-compliance, as well as the following creation of new non-compliances: (1) a floor area of 3,471 sq. ft. (FAR of 1.31) – 1,980 sq. ft. (FAR of 0.75) is the maximum permitted; (2) lot coverage of 0.50 – 0.45 is the maximum permitted; and (3) a side yard on the south side of the building of 5'-0"; a side yard of 7'-10" is required on this side in order to comply with the 13'-0" aggregate side yard requirement; and

WHEREAS, as noted above, the applicant initially sought approval of this proposed enlargement through a special permit pursuant to ZR § 73-622, which authorizes the Board to approve home enlargements that would increase non-complying FAR, lot coverage and side yards; and

WHEREAS, however, at the initial hearing on this application, the Board observed that the proposed enlargement did not meet the parameters of the text set forth at ZR § 73-622; and

WHEREAS, specifically, ZR § 73-622 provides "any enlargement within a side yard shall be limited to an enlargement within an existing non-complying side yard and such enlargement shall not result in a decrease in the existing minimum width of open area between the building that is being enlarged and the side lot line"; and

WHEREAS, the Board observes that its authority to waive side yard provisions under ZR § 73-622 is limited to this section, and that a waiver of the total side yard requirement is not available; and

WHEREAS, the side yard requirements in many of the residential districts where ZR § 73-622 is available, including the subject zoning district, provide that each side yard must be a minimum of 5'-0", and that the aggregate width of all side yards must total at least 13'-0"; and

WHEREAS, the applicant proposes a post-enlargement aggregate width of all side yards of 10'-2"; and

WHEREAS, as stated in the November 7, 2005 letter and Revised Statement of Facts and Findings, the applicant agrees that ZR § 73-622 can not authorize a proposed side yard aggregate width of less than the required 13 feet; and

WHEREAS, moreover, the Board observes the above-cited provision only allows an enlargement that is a straight-line extension of an existing non-complying side yard; that is, the only side yard waiver the Board can allow through the special permit is the an increase in the amount of non-complying side yard so long as the existing width is maintained; and

WHEREAS, the subject property has no existing non-complying side yard which can be extended in this fashion, which means that the Board is without any authority to waive any side yard objection raised by the Department of Buildings as to the proposal; and

WHEREAS, the Board notes that the applicant could still seek a special permit under ZR § 73-622 so long as the enlargement left a 7'-10" side yard on the south side of the lot, instead of the proposed 5'-0" side yard; and

WHEREAS, however, the applicant states that an enlargement that leaves a 7'-10" southern side yard would not afford the owner the room dimensions that he desires

without further expensive interior modifications; and

WHEREAS, accordingly, the applicant changed the application to a request for a variance pursuant to ZR § 72-21; and

WHEREAS, the threshold finding for any variance is set forth at ZR § 72-21(a), which requires the Board to find "that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located"; and

WHEREAS, the applicant alleges that the following is a unique physical condition that leads to practical difficulties in constructing an enlargement to the home at the subject site in strict compliance with underlying district regulations: the lot is only 60 ft. deep, which, when considered in conjunction with the location of the existing building and applicable yards requirements, significantly impacts the ability of the owner to make use of the ZR § 73-622 special permit provision; and

WHEREAS, the Board first observes that the site and the existing home thereupon suffer no inherent hardship whatsoever; instead, the purported problem claimed by the owner results from personal desire, namely, the desire to enlarge an already overbuilt and indisputably habitable home; and

WHEREAS, the Board is aware of the body of case law that establishes that a variance may not be granted based upon the personal wishes of a property owner; and

WHEREAS, specifically, the Board cites to *Hickoz v. Griffin*, 298 N.Y. 365 (1949); *Belgarde v. Kocker*, 627 N.Y.S.2d 128 (3d Dep't 1995); *Fuhst v. Foley*, 45 N.Y.2d 441 (1978); *Quaglio v. La Freniere*, 211 N.Y.S.2d 239 (1960); and *Fromer v. Citrin*, 589 N.Y.S.2d 1003, (2d Dep't 1992), though this is not an exhaustive list of cases that hold that the personal preferences of an owner can not be the basis for a claim of practical difficulties; and

WHEREAS, that the personal preference of the owner is the impetus for the subject application was conceded by the owner at hearing; and

WHEREAS, specifically, the owner testified that the proposed enlargement would allow creation of a third child's bedroom on the second floor, and avoid the placement of the third bedroom in the attic; and

WHEREAS, the owner claimed that this was his preference; and

WHEREAS, the applicant's January 16, 2006 submission confirms that the alleged problem is caused by the preference of the owner; specifically, this submission states "These difficulties include the practical usage of the bedrooms at the attic level for use by the young family which resides therein . . . This proposed small enlargement would

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help alleviate this hardship by allowing an additional bedroom on the second floor"; and

WHEREAS, while the owner may prefer that an additional bedroom be located on the same floor as the master bedroom, the Board may not grant a variance when the predicate is this and nothing more; and

WHEREAS, additionally, the Board rejects the shallow depth of the lot as a unique physical condition that leads to hardship; and

WHEREAS, while the applicant has gone to great lengths to establish that the site is one of the few comparably shallow lots in the neighborhood, no nexus between the lot's status as a shallow lot and any actual hardship has been established; and

WHEREAS, in fact, the home on the lot currently enjoys non-complying status as to floor area (it is already 1,020 sq. ft. larger than otherwise permitted in the subject zoning district), and is usable for its intended residential purpose; and

WHEREAS, as noted above, it has approximately 3,000 sq. ft. of livable floor area, three bedrooms, and a room for a fourth bedroom and/or a modest office in the attic; and

WHEREAS, the applicant attempted to argue that the home was one of the few in the immediate area that was constrained by lot size from enlarging; and

WHEREAS, in support of this argument, the applicant submitted a study of 28 homes in the area (including the subject home); and

WHEREAS, the Board notes that of the 27 other homes studied by the applicant, approximately 40 percent are similarly constrained in terms of their ability to be enlarged due to the size of the lot and the amount of yard available for expansion; thus, the size of the lot is not a unique condition that leads to any inherent hardship; and

WHEREAS, the applicant also contends that the attic level is not fully usable due to a sloped roof, and that the unusable space should be discounted by the Board in its assessment of the habitability of the home; and

WHEREAS, specifically, the applicant argues that only thirty-three percent of the 987 sq. ft. of zoning floor area at the attic level rises to a full ceiling height; and

WHEREAS, the applicant contends that this reflects the attic's "obsolete" design; and

WHEREAS, however, the Board observes that in the course of other applications, it has reviewed many other homes with similar attic conditions, with attic floor space that counts as zoning floor area; and

WHEREAS, the Board has never considered such attic space to be a unique physical condition that leads to a practical difficulty for purposes of a variance; and

WHEREAS, the Board observes that houses in Brooklyn come in many sizes and configurations, and merely establishing that a space within a house is less than optimum when measured against the personal desire of an owner is not a valid basis for a claim of hardship; and

WHEREAS, further, the Board observes that the attic condition present in the home is typical of other homes in the area; and

WHEREAS, in fact, the applicant's study of the nearby homes indicates that similarly sized homes in the neighborhood appear to have either the same constrained attic space, in that they either also have a peaked roof with gables, or they only have a peaked roof, and thus do not even enjoy the possibility of usable attic space; and

WHEREAS, specifically, 16 homes cited by the applicant have "peaked roofs only", which means that they provide even less habitable space than the subject home; and

WHEREAS, thus, it can not be said that the subject home is disadvantaged on the basis of the size of its attic when compared to neighboring buildings, since many of the buildings do not even have attics; and

WHEREAS, accordingly, the Board does not consider this to be a unique condition that causes hardship; and

WHEREAS, finally, the Board observes that while some of the floor area in the attic may not rise to a full ceiling height, it is nonetheless usable for a variety of purposes, such as an office (where one might sit rather than stand) or as a child's bedroom (children often being shorter than adults); and

WHEREAS, the applicant makes the further argument that the overall home is smaller and thus functionally obsolete, when compared with other homes in the area; and

WHEREAS, however, the Board is not persuaded that the overall size of the subject home is a hardship relative to other properties; and

WHEREAS, in fact, the record reveals that the floor area even without considering the attic floor area is comparable to many other homes in the area; and

WHEREAS, again, a review of the homes cited in the applicant's study reveals that approximately 75 percent have a total floor area of between 1330 to 1980 sq ft., which is either less than or equal to the amount of floor area in the subject home if the attic floor area is subtracted; and

WHEREAS, thus, this condition is also not unique; and

WHEREAS, finally, the Board does not consider the alleged inability to use the home enlargement special permit a hardship for purposes of a variance, as the applicant seems to suggest; and

WHEREAS, the Board has not previously credited an inability to use a special permit as the basis for a variance, since this is contrary to both ZR § 72-21 and established case law as to variances; and

WHEREAS, many of the special permit provisions set forth in the Zoning Resolutions establish prerequisites; that some sites meet the prerequisites and others nearby do not is evidence only of the occasionally arbitrary nature of zoning regulations in general, but it is not the basis of a practical difficulty claim; and

WHEREAS, a contrary view would obviously lead to absurd results; for instance, ZR § 73-621 allows the Board to authorize an enlargement to a non-complying or complying residential building within most residential zoning districts so long as the building existed on December 15, 1961; and

WHEREAS, an owner of a residential building in a R1 zoning district constructed in 1962 thus could not use this special permit provision; and

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WHEREAS, while this might be the impetus for said owner to seek a variance for the enlargement, the inability to use the special permit is merely the motivation; it can not be the basis on which the Board grants the variance; and

WHEREAS, the instant application presents an analogous situation: confronted with an inability to use a special permit, the owner was motivated to seek a variance; and

WHEREAS, however, the Board has no authority to accept this inability as the basis of a practical difficulty claim; and

WHEREAS, during the course of the hearing process, the applicant made an additional argument; and

WHEREAS, specifically, in the February 27, 2006 submission, the applicant cites to ZR § 23-52, which permits a reduction in the rear yard for a shallow interior lot; and

WHEREAS, the applicant concedes that said provision has no applicability to the subject corner lot, but appears to argue that when the drafters of the ZR considered shallow interior lots as deserving of allowance on the provision of rear yards, they were intending to avoid penalizing undersized zoning lots which could not accommodate required yards; and

WHEREAS, the applicant states that this supports the notion that the dimensions of the subject lot are unique and that they give rise to hardship; and

WHEREAS, the problem with this argument is that despite the allegedly constraining lot dimensions, the site is generously developed with an over-built, indisputably habitable home with three bedrooms, an attic office and a cellar recreation room, and possesses complying yards on all sides; and

WHEREAS, additionally, whatever problems corner lots experience in terms of development has already been addressed through the exemption of a rear yard requirement; and

WHEREAS, accordingly, the Board does not find this argument persuasive; and

WHEREAS, since the application fails to meet the finding set forth at ZR §72-21 (a), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the finding set forth at Z.R. § 72-21(a), which is the threshold finding that must be met for a grant of a variance, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Brooklyn Borough Commissioner, dated November 17, 2004, acting on Department of Buildings Application No. 301861466, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, March 14, 2006.

160-04-BZ/161-04-A

APPLICANT – Mitchell S. Ross, Esq., Agusta & Ross, for Daffna, LLC, owner.

SUBJECT – Application April 21, 2004 – under Z.R. §72-21 to permit, in an M1-2 zoning district, the residential

conversion of an existing four-story commercial loft building into eight dwelling units, contrary to Z.R. §42-10.

PREMISES AFFECTED – 73 Washington Avenue, East side of Washington Avenue 170’ north of Park Avenue, Block 1875, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for decision, hearing closed.

245-04-BZ

APPLICANT – Agusta & Ross, for Mark Stern, owner.

SUBJECT – Application July 6, 2004 – under Z.R. §72-21 – to permit the proposed five-story, nine unit multiple dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 102/04 Franklin Avenue, west side, 182’ south of Park Avenue, Block 1898, Lots 45 and 46, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 1:30 P.M., for continued hearing.

286-04-BZ & 287-04-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.

SUBJECT – Application August 18, 2004 – under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED –

85-78 Santiago Street, west side, 11.74’ south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#13), Borough of Queens.

85-82 Santiago Street, west side, 177’ south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#15), Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for adjourned hearing.

338-04-BZ

APPLICANT – Martyn & Don Weston, for Hi-Tech Equipment Rental Inc., owner.

SUBJECT – Application October 12, 2004 – under Z.R. §72-21 to permit the proposed construction of a one story and cellar extension to an as-of-right six story hotel, and to permit

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on grade accessory parking and below grade showroom/retail use, in an R5 zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 806/14 Coney Island Avenue, west side, 300.75' north of Ditmas Avenue, Block 5393, Tentative Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Don Weston and Jack Freeman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for decision, hearing closed.

351-04-BZ

APPLICANT – The Agusta Group, for Stahva Realty, owner. SUBJECT – Application November 1, 2004 – under Z.R. §73-44 – to allow parking reduction for proposed enlargement of existing office building located in an R6B/C2-2.

PREMISES AFFECTED – 210-08/12 Northern Boulevard, thru lot between Northern Boulevard and 45th Road, 150' east of 211th Street, Block 7309, Lots 21 and 23 (Tentative Lot 21), Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Mitchell Ross and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

359-04-BZ

APPLICANT – Eric Palatnik, P.C., for Alfred Savegh, owner.

SUBJECT – Application November 12, 2004 – Under Z.R. §73-622 to permit the legalization of an enlargement to an existing single family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio and rear yard, is contrary to Z.R. §23-141 and §23-47.

PREMISES AFFECTED – 1425 East 24th Street, between Avenues "N" and "O", Block 7678, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for decision, hearing closed.

398-04-BZ

APPLICANT – Eric Palatnik, P.C., for Babavof Avi, owner. SUBJECT – Application December 23, 2004 – under Special Permit Z.R. §73-622 – proposed legalization of an enlargement of a single family residence which causes non-compliance to Z.R. §23-14 for open space and floor area. The premise is located in R2 zoning district.

PREMISES AFFECTED – 2103 Avenue M, northeast corner of East 21st Street, Block 7639, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

52-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Coptic Orthodox Church of St. George, owner.

SUBJECT – Application March 4, 2005 – under Z.R. §72-21 proposed development of a six-story and cellar building, with community use on floors one through three, residential use on floors three through six, and with parking in the cellar, located in a C1-2 within an R5 zoning district.

PREMISES AFFECTED – 6209 11th Avenue, northeast corner of 63rd Street, Block 5731, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

65-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application March 16, 2005 – Special Permit filed pursuant to sections 11-411 and 11-413 of the zoning resolution to request the reinstatement of an expired, pre-1961, variance, and to request authorization to legalize the change of use from a gasoline service station with accessory automotive repairs, to an automotive repair facility without the sale of gasoline, located in a C1-4/R8 zoning district.

PREMISES AFFECTED – 269-275 East Burnside Avenue, northside of East Burnside Avenue between Ryer Avenue and Anthony Avenue, Block 3156, Lot 85, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for decision, hearing closed.

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81-05-BZ

APPLICANT – Bryan Cave LLP (Margery Perlmutter, Esq.) for the Lyon Group, LLC, owner.

SUBJECT – Application April 5, 2005 – under Z.R. §72-21 to construct a 7-story plus mezzanine residential building containing 39 dwelling units and 10 accessory parking spaces in an R6 district, contrary to Z.R. §§23-145, 23-632, 23-633, 25-23.

PREMISES AFFECTED – 1061/71 52nd Street, north side, 229' east of Fort Hamilton Parkway, Block 5653, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Margery Perlmutter.

For Opposition: Stuart Klein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for decision, hearing closed.

132-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sami Alboukai, owner.

SUBJECT – Application – under Z.R. §73-622 to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per Z.R. §23-141, a rear yard less than the minimum per Z.R. §23-47 and a perimeter wall height greater than the maximum per Z.R. §23-31. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 220 West End Avenue, west side of West End Avenue between Oriental Boulevard and Esplanade, Block 8724, Lot 158, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel and Harold Weinberg.

For Opposition: Judith Baron and Susan Klapper.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

133-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Yitzchok Shindler.

SUBJECT – Application November 30, 2005 – Under Z.R. §73-622 to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per Z.R. §23-141 of the Zoning Resolution. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1231 East 21st Street, southeast corner of Avenue K and East 21st Street, Block 7621, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Sondra Safier.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

136-05-BZ

APPLICANT – Gerald J. Caliendo, R.A., A.I.A., for Irving Avenue Holding, LLC, owner.

SUBJECT – Application June 3, 2005 – Under Z.R. §72-21 to construct a two family, two story dwelling which does not comply with the front yard requirement pursuant to Z.R. §23-45 and is less than the required lot width/lot area pursuant to Z.R. §23-32. The premise is located in an R4 zoning district. PREMISES AFFECTED – 1901 Nereid Avenue, corner formed by intersection of the east side of Ely Avenue and North side of Nereid Avenue, Block 5092, Lot 10, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Sandy Anagnostou.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for decision, hearing closed.

146-05-BZ

APPLICANT – Howard Weiss, Esq., Davidoff, Malito & Hutcher,LLP, for Spafumiere Inc., lessee, Manhattan Embassy Co., owner.

SUBJECT – Application June 10, 2005 – Approval sought for a proposed physical cultural establishment located on a portion of the first floor of a mixed-use building. The PCE use will contain 2,300 square feet. The site is located in a C1-9 TA Zoning District.

PREMISES AFFECTED – 900 Second Avenue, a/k/a 884-900 Second Avenue, 301-303 East 47th Street, 300-306 East 49th Street, Block 1340, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Howard Weiss.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for decision, hearing closed.

179-05-BZ

APPLICANT – Harold Weinberg, P.E., for Steven Goldfarb, owner.

SUBJECT – Application August 3, 2005 – Special Permit pursuant to ZR §73-622 for a two story rear enlargement to a single family semi-detached home to vary Z.R. §23-14 for floor area and open space, Z.R. §23-47 for less than the required rear yard, Z.R. §23-641 for less than the required

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side yard and Z.R. §23-631 for total height. The premise is in an R3-1 zoning district.

PREMISES AFFECTED – 139 Langham Street, east side 311’-8 7/8” south of Shore Boulevard, Block 8755, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 28, 2006, at 1:30 P.M., for decision, hearing closed.

194-05-BZ

APPLICANT – David L. Businelli, for Steven Morris, owner. SUBJECT – Application August 16, 2005 – Under Z.R. §72-21 – Extending the term of variance which expired on November 6, 1997 to permit in an R3-X the continued use of a one story building for retail sales with accessory parking. (Jurisdictional §72-21).

PREMISES AFFECTED – 5525 Amboy Road, North side 442.44’ West of Huguenot Avenue, Block 6815, Lot 85, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: David Businelli.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: 5:00 P.M.

BULLETIN

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44-06-BZ

150-24 18th Avenue, South side of 18th Avenue, 215 east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens, Community Board: 7. Under 72-21-Proposed enlargement of existing one family dwelling exceeds the permitted floor area and does not provide the required side yards.

45-06-BZY

1610 Avenue S, Avenue S, Block 7295, Lot 3, Borough of **Brooklyn, Community Board: 15**. Extension of Time-11-332-To complete construction and obtain a C. of O. for minor development for 24 months.

46-06-BZ

423 West 55th Street, North side of West 55th Street between Ninth and Tenth Avenues, Block 1065, Lot 12, Borough of **Manhattan, Community Board: 4**. SPECIAL PERMIT-73-03-to permit the operation of a Physical Culture Establishment.

47-06-A

1610 Avenue S, Avenue S, Block 7295, Lot 3, Borough of **Brooklyn, Community Board: 15**. Appeal-Revocation of the permit by the Department of Buildings was invalid to stop construction before a downzoning on 2/15/06, because it had been issued after that date and gave no valid basis for the revocation.

48-06-BZ

420 Morris Park Avenue, South west corner of East Tremont Avenue & Morris Park Avenue, Block 3909, Lot 61, Borough of **Bronx, Community Board: 6**. Under 72-21-To construct a new eight (8) story building containing seventy (70) apartments.

49-06-BZ

2041 Flatbush Avenue, At the intersection of Flatbush Avenue and the eastern side of Baughman Place., Block 7868, Lot 18, Borough of **Brooklyn, Community Board: 18**. Under 72-21-To permit the construction of a three-story commercial building contrary to applicable bulk regulations.

50-06-BZ

461 Carrol Street, Between Nevins Street and Third Avenues., Block 447, Lot 45, Borough of **Brooklyn, Community Board: 6**. Under 72-21-To permit the conversion of former industrial/commercial building to an owner occupied two family residence.

51-06-BZ

188-02/22 Union Turnpike, On the south side of Union Turnpike between 188th and 189th Streets., Block 7266, Lot 1, Borough of **Queens, Community Board: 8**. Under 72-21-To legalize an existing dance studio on the first and cellar floors and to permit the operation of a Physical Culture Establishment on the cellar floor of an existing building in a C1-2 Zoning District.

52-06-BZ

129-09 26th Avenue, North side of 26th Avenue between 127th Street and Ulmer Street, Block 4273, Lot 90, Borough of **Queens, Community Board: 7**. Applications filed pursuant to sections 73-36, 73-48 and 73-49 in an M1-1 zoning district.

53-06-A

104 Beach 215 Street, South of Beach 215 Street (unmapped street) East of Breezy Point Boulevard., Block 11635, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3-Proposed enlargement of second floor on 1 family dwelling, being altered does not have at least 8% of the total perimeter of the building fronting directly on a mapped street ic contrary to 27-291 of the Admin. Code

54-06-BZ

401 & 403 Elmwood Avenue, Elmwood Avenue between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of **Brooklyn, Community Board: 12**

55-06-BZ

31 Nadine Street, Saint Andrews Road and Richmond Road, Block 2242, Lot 92,93, 94 (92 tent), Borough of **Staten Island, Community Board: 2**. Variance/Special Permit-To permit construction of a three (3) story office building.

DOCKET

56-06-BZ

1060 East 24th Street, East 24th Street between Avenue J and Avenue K., Block 7606, Lot 70, Borough of **Brooklyn, Community Board: 14**. SPECIAL PERMIT-73-622-To allow the enlargement of a single family residence located in a residential (R2) zoning district.

57-06-A

141,143,145,147 Storer Avenue, South of Storer Avenue, 101.57' west of the corner of Carlin Street & Storer Avenue., Block 7311, Lot 35, Borough of **Staten Island, Community Board: .** General City Law Section 36-Proposed two (2) story commercial building not having a least 8% of the total perimeterfronting directly on a legally mapped street.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

APRIL 25, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 25, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

265-59-BZ

APPLICANT – Martyn & Don Weston, for 11 College Place, Inc., owner.

SUBJECT – Application December 12, 2005 – Extension of term for a variance to permit an eight car garage located in a residential building. The premise is located in an R7-1/LH-1 zoning district.

PREMISES AFFECTED – 11 College Place, west side 89'-6" north of Love Lane, Block 236, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #2BK

1233-88-A

APPLICANT – Richard Bowers of Stadtmauer Bailkin, LLP, for Sunrise Development, owner.

SUBJECT – Application February 22, 2006 – Extension of Time/Waiver to complete construction of a five-story (with basement) residential buiding of senior housing (Sunrise) for an additional twenty four months which expired on October 29, 2005. The premise is located in an R3-1 (Hillside Preservation District.

PREMISES AFFECTED – 801 Narrows Road North, north side of Narrows Road, 1162.62' east of Howard Avenue, Block 631, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #1SI

143-05-A

APPLICANT – Eric Palatnik, P.C., for Andrew Latos & Peter Latos, owners.

SUBJECT – Application February 15, 2006 – Extension of Time to complete construction and to obtain a Certificate of Occupancy. On November 29, 2005 BSA granted issued a resolution determining that the owner of the premises had obtained a vested right to continue construction under DOB permit No. 4021124879 and reinstated the permit for a period of six months to expire on May 29, 2006. The premise is located in a R2A zoning district.

PREMISES AFFECTED – 47-05 Bell Boulevard, between 47th and 48th Avenues, Block 7346, Lot 49, Borough of Queens.

COMMUNITY BOARD #11Q

149-05-A

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas, owner.

SUBJECT – Application February 21, 2006 – Extension of Time to complete construction and to obtain a Certificate of Occupancy. On November 1, 2005 BSA issued a resolution determining that the owner of the premises had obtained a vested right to continue construction under DOB permit No. 401867618 and reinstated the permit for a period of six months to expire on May 1, 2006. The premise is located in an R2A zoning district.

PREMISES AFFECTED – 32-29 211th Street, east corner of 32nd Avenue and 211th Street, Block 6061, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

APPEALS CALENDAR

263-03-A

APPLICANT – John W. Carroll, Wolfson & Carroll, for Ben Bobker, owner.

SUBJECT – Application August 20, 2003 – An administrative appeal challenging the Department of Buildings' final determination dated August 13, 2003, in which the Department refused to revoke the certificate of occupancy, on the basis that the applicant had satisfied all objections regarding said premises.

PREMISES AFFECTED – 1638 Eighth Avenue, west side, 110-5' east of Prospect Avenue, Block 1112, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #7BK

361-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R.§110331 under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

366-05-A

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APRIL 25, 2006, 1:30 P.M.

CALENDAR

APRIL 26, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 25, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

320-05-BZ

APPLICANT – Rothkrug Weinberg, for John Catsimatidis, owner; 113 4th Sports Club, LLC, lessee.

SUBJECT – Application November 2, 2005 – Special Permit Under ZR §73-36, to allow the proposed operation of a physical cultural establishment located on portions of the cellar and first floor of an existing eight story mixed use structure. PCE use is 25, 475 sq ft of floor area. The site is located in a C6-1 Zoning District.

PREMISES AFFECTED – 113/9 Fourth Avenue, a/k/a 101 /117 East 12th Street, N/E/C of Fourth Avenue and East 12th Street, Block 558, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #3M

351-05-BZ

APPLICANT – The Law Offices of Howard Goldman/Emily Simons, Esq., for Atlas Packaging Solutions Holding Co., owner.

SUBJECT – Application December 14, 2005 – Variance ZR §72-21 to allow a proposed four (4) story residential building containing eight (8) dwelling units in an M2-1 Zoning District; contrary to ZR §42-00.

PREMISES AFFECTED – 146 Conover Street, south facing block of Conover Street, between King and Sullivan Streets, Block front of Conover Street, between King and Sullivan Streets. Block 554, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.

SUBJECT – Application December 22, 2005 – Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to ZR §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

Jeff Mulligan, Executive Director

NOTICE IS HEREBY GIVEN of a public hearing, Wednesday morning, April 26, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL HEARING

334-05-BZ

APPLICANT – Kramer Levin Naftalis & Frank, LLP, for The Whitney Museum of American Art, owner.

SUBJECT – Application November 23, 2005 - Zoning Variance (use & bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the expansion of an existing museum complex including the construction a nine (9) story structure located in C5-1(MP) and R8B (LH-1A) zoning districts. The proposed variance would allow modifications of zoning requirements for street wall height, street wall recess, height and setback, mandatory use, and sidewalk tree regulations; contrary to ZR § § 24-591, 99-03, 99-051, 99-052, 99-054, 99-06.

PREMISES AFFECTED – 933-945 Madison Avenue, 31-33 East 74th Street, East side of Madison Avenue between East 74th and East 75th Streets, Block 1389, Lots 21, 22, 23, 24, 25, 50, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

CALENDAR

MAY 2, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 2, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

337-79-BZ, Vol. II

APPLICANT – Moshe M. Friedman, P.E., for Dr. Martin S. Bernstein, owner.

SUBJECT – Application January 23, 2006 – Extension of Term/Waiver for the conversion of the first story of an existing two (2) story residential building into medical offices, located in an R2 zoning district.

PREMISES AFFECTED – 2107 Avenue N, north side of Avenue N, 40' east of East 21st Street, Block 7657, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for George Marinello, owner; Wendy's Restaurant, lessee.

SUBJECT - Application January 12, 2006 – Pursuant to ZR§§72-21 and 72-22 for the extension of term for ten years for an accessory drive thru facility at an eating and drinking establishment (Wendy's) which one-year term expired February 1, 2006. An amendment is also proposed to extend the hours of operation of the accessory drive-thru facility to operate until 4 a.m. daily. The premise is located in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, between 91st Street and Remsen Avenue, Block 8108, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD#17BK

359-02-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich, LLC, owner; Montessori School of Manhattan, LLC, lessee.

SUBJECT – Application January 17, 2006 – Reopening for an Amendment to a previous variance ZR 72-21 that allowed the operation of a school on the first floor and cellar in a six story buildin; a subsequent amendment in 2005 was to relocate the operation of the school from the cellar to the second floor and to maintain partial first floor operation. The current proposed amendment is to allow for the additional expansion of the school to the third floor of the building. The premise is located in an M1-5(TMU) zoning district.

PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street, west of Collister Street, Block 214, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

400-05-BZY/401-05-BZY

APPLICANT – John Patrick Curran of Tannebaum Helpern et al for Philip Caccese, owner.

SUBJECT – Application December 28, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R3-X Zoning District. Current R3-1 Zoning District. PREMISES AFFECTED –3202 & 3204 Morley Avenue, Block 4313, Lots 2 & 4, Borough of Staten Island.

COMMUNITY BOARD #2SI

MAY 2, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 2, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

297-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Vestry Acquisition, LLC, owner.

SUBJECT – Application September 30, 2005 – Zoning Variance (use) pursuant to ZR §72-21 to allow a proposed nine (9) story residential building containing seven (7) dwelling units and eight (8) accessory parking spaces located in an M1-5 district (Area B2) of the Special Tribeca Mixed Use District; contrary to ZR§42-00, §111-104(b) and §13-12.

PREMISES AFFECTED – 33 Vestry Street, located on the southerly side of Vestry Street, 100' west of Hudson Street, Block 219, Lot 18, Borough of Manhattan

COMMUNITY BOARD#1M

314-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Mouhadeb, owner.

SUBJECT – Application October 25, 2005 – Special Permit Z.R. §73-622 for an enlargement to a single family residence which proposed an increase in the degree of non-compliance with respect to floor area ratio and open space/lot coverage as per ZR23-141b, less than the total required side yards as per ZR23-361a and a rear yard less than the required rear yard as per ZR 23-47. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 1670 East 23rd Street, East 23rd Street between Avenue P and Quentin Road, Block 6785, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

4-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Isaac Tessler and Miriam Tessler, owners.

SUBJECT – Application January 5, 2006 – Special Permit Z.R. §73-622 for an enlargement of an existing single family residence to vary ZR§23-141 for open space and floor area and 23-47 for less than the minimum rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1435 East 21st Street, East 21st Street between Avenue M and Avenue N, Block 7657, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 28, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, January 24, 2006, were approved as printed in the Bulletin of February 3, 2006, Volume 91, Nos. 4-5.

SPECIAL ORDER CALENDAR

645-59-BZ

APPLICANT – Vassalotti Associate Architects, LLP., for Cumberland Farms, Inc., owner.

SUBJECT – Application July 12, 2005 – Extension of Term of a Variance for an additional 10 years for the existing gasoline service station with accessory convenience store which expired on October 7, 2005. The premise is located in a C2-1 in an R5 zoning district.

PREMISES AFFECTED – 10824 Flatlands Avenue, Block 8235, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, this is an application made pursuant to ZR § 11-411, for an extension of the term of the previously granted variance, permitting a gasoline station and accessory convenience store; and

WHEREAS, a public hearing was held on this application on March 7, 2006, after due notice by publication in *The City Record*, and then to decision on March 28, 2006; and

WHEREAS, Community Board 18, Brooklyn, recommends conditional approval of this application, though it expressed concern about patrons parking on the sidewalk, contrary to the Board's prior grant; and

WHEREAS, the premises is a 19,900 sq. ft. site located on the south side of Flatlands Avenue at East 108th Street; and

WHEREAS, the site is located within a C2-1 (R5) zoning district, and is improved upon with a gasoline service station and an accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 12, 1960, when, under the subject calendar number, the Board granted an enlargement of an existing gasoline station; and

WHEREAS, subsequently, the term of this grant has been extended by the Board at various times, most recently on April 23, 1996, for a term of 10 years, expiring on October 7, 2005; and

WHEREAS, at hearing, the Board asked the applicant to address the Community Board's concerns regarding parking on the sidewalk; and

WHEREAS, the applicant responded that this problem existed when there was an automotive body shop on the site, which has been removed, and that it does not exist with the site's current commercial activity; and

WHEREAS, pursuant to ZR §11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on January 12, 1960, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from October 7, 2005, to expire on October 7, 2015, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received July 12, 2005' -(1) sheet and 'February 15, 2005' -(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 7, 2015;

THAT there shall be no parking on the sidewalk;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

(DOB Application No. 300157782)

Adopted by the Board of Standards and Appeals, March 28, 2006.

240-90-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Keil Brothers, Inc., owner.

SUBJECT – Application September 20, 2005 – Extension of Term/Amendment of variance of an Agricultural Nursery and Truck Garden which expires on May 14, 2006. It is requested to extend the term from a 10 year term to a 20 year term and to amend to allow overnight parking for 10 vehicles. PREMISES AFFECTED – 210-12 48th Avenue, 210th Street and 48th Avenue, Block 7369, Borough of Queens.

MINUTES

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening, an amendment to the previously granted variance, and an extension of term; and

WHEREAS, a public hearing was held on this application on March 7, 2006, after due notice by publication in *The City Record*, and then to decision on March 28, 2006; and

WHEREAS, Community Board 11, Queens, recommends approval of this application and supports a 20-year extension of term and the overnight parking request; and

WHEREAS, the premises is located at the southeast corner of 48th Avenue and 210th Street; and

WHEREAS, the site is located within an R4B zoning district and is improved upon with a commercial agricultural nursery and truck garden; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 14, 1991 when, under the subject calendar number, the Board granted an application for the subject lot to change use from a mason builders' supply yard to an agricultural nursery and truck garden; and

WHEREAS, subsequently, this grant has been amended and extended by the Board at various times; and

WHEREAS, most recently, on June 25, 1996, the Board granted an extension of term to expire on May 14, 2006; and

WHEREAS, the applicant seeks an extension of term for twenty years, to expire on May 14, 2026; and

WHEREAS, in addition to a new extension of term, the applicant requests an amendment to permit the overnight parking of up to ten accessory vehicles at the site; and

WHEREAS, the Board, after reviewing the site plan, determined that the request for as of right parking was appropriate because it diminishes the delivery trucks' impact on neighboring streets, and the enclosed lot can easily accommodate it; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested extension of term and the requested inclusion of overnight parking appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on May 14, 1991, as subsequently extended, so that as amended this portion of the resolution shall read: "to permit the maintenance of an agricultural nursery and truck garden, with overnight parking for a maximum of ten accessory vehicles, and to extend the term for twenty years from May 14, 2006, to expire on May 20, 2026, *on condition* that the use shall substantially conform to

drawings as filed with this application, marked 'Received September 20, 2005' –(2) sheets; and *on further condition*:

THAT the term of this grant shall be for twenty years, to expire on May 14, 2026;

THAT overnight parking shall be limited to ten vehicles;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review and approve the layout of the onsite parking;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 400597261)

Adopted by the Board of Standards and Appeals, March 28, 2006.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Samuel H. Valencia – Valencia Enterprise, owner

SUBJECT – Application July 20, 2005 – Reopening for an Extension of Term/Waiver for an eating and drinking establishment, with dancing, which expired on March 7, 2004, located on the first floor of a three story mixed use building with residences on the upper floors. The premise is located in a C2-2 in an R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side of Roosevelt Avenue, 125.53' East of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Samuel H. Valencia.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening, an amendment to the previously granted special permit, and an extension of term that expired on March 7, 2004; and

WHEREAS, a public hearing was held on this application on March 7, 2006, after due notice by publication in *The City Record*, and then to decision on March 28, 2006; and

WHEREAS, Community Board 2, Queens, supports this application; and

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WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the subject premises is located on the north side of Roosevelt Avenue, east of 52nd Street; and

WHEREAS, on March 7, 1995, the Board granted a special permit application pursuant to ZR §73-244, to permit, in a C2-2 (R6) zoning district, the use of the first floor and cellar of an existing three-story building as an eating and drinking establishment with dancing; and

WHEREAS, subsequently, the Board has amended and extended this grant twice; and

WHEREAS, most recently, on August 14, 2001, the Board granted an extension of term to expire on March 7, 2004; and

WHEREAS, the Board finds that a three-year extension is appropriate, with the conditions set forth below; and

WHEREAS, in addition to a new extension of term, the applicant is requesting approval of minor modifications to the approved plans, including changing some of the door configurations, and insulating the vestibule with sound-proofing materials; and

WHEREAS, the Board, after reviewing the site plan, approves of the proposed modifications, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated March 7, 1995, so that as amended this portion of the resolution shall read: "to grant an extension of the term of the special permit for a term of three years; *on condition* that the use and operation of the eating and drinking establishment with dancing shall substantially conform to drawings as filed with this application, marked 'Received March 2, 2006'-(2) sheets; and *on further condition*:

THAT this grant shall be limited to a term of three years from March 7, 2004, expiring March 7, 2007;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the Department of Buildings shall review the approved plans for compliance with all safety regulations, including egress and waiting area requirements;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 400322469)

Adopted by the Board of Standards and Appeals, March 28, 2006.

136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel-Net Holding, Inc.,

owner.

SUBJECT – Application November 23, 2005 – Reopening for an amendment to the resolution to extend the time to complete construction which expires June 11, 2006.

PREMISES AFFECTED – 11-11 44th Drive, north side between 11th and 21st Street, Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on February 7, 2006, after due notice by publication in *The City Record*, laid over for continued hearing on March 7, 2006 and then to decision on March 28, 2006; and

WHEREAS, the subject site is located on the north side of 44th Drive, between 11th and 21st Streets, and is within an M1-4 (R7A) zoning district; and

WHEREAS, on June 11, 2002, the Board granted an application under ZR §72-21, to permit, in an M1-4 zoning district, an increase in floor area for a wholesale office with accessory storage (Use Group 10) and the legalization of the existing encroachment into the rear yard; and

WHEREAS, in its resolution, the Board specified that there be substantial completion in accordance with ZR § 72-23, thus the grant's term expires on June 11, 2006; and

WHEREAS, the applicant represents that due to a change in the zoning district from M1-4 to M1-4 (R7A) that necessitated a redesign of the plans, construction will not be substantially completed by the grant expiration; and

WHEREAS, the applicant represents that the owner is now able to complete construction; and

WHEREAS, during the course of hearings, the Board learned that the applicant has changed the original plans; and

WHEREAS, when the Board inquired about the new plans, the applicant requested additional time to submit an application for an amendment to the revised plans; and

WHEREAS, the Board agreed to allow the applicant additional time to prepare an application for an amendment to the approved plans, to be submitted subsequent to the grant of the subject extension; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on June 11, 2002, so that as amended this

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portion of the resolution shall read: "to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of two years from the date of this resolution, to expire on March 28, 2008; *on condition*:

THAT a new certificate of occupancy shall be obtained within two years from the date of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 400849748)

Adopted by the Board of Standards and Appeals, March 28, 2006.

410-68-BZ

APPLICANT – Sheldon Lobel, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application January 21, 2006 – Extension of time to complete construction and to obtain a certificate of occupancy pursuant to Z.R.§11-412.

PREMISES AFFECTED – 85-05 Astoria Boulevard, Block 1097, Lot 1, Borough of Queens.

COMMUNITY BOARD #3

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to April 11, 2006, at 10 A.M., for decision, hearing closed.

357-72-BZ

APPLICANT - Law Office of Fredrick A. Becker, for Permanent Mission of the Russian Federation to the U.N., owner.

SUBJECT – Application December 19, 2005 – Amendment to a previously granted Variance ZR 72-21 for a multiple dwelling and community facility complex to allow for the enclosure of an existing swimming pool and the enlargement of an accessory health and sports facility. The premise is located in an R-4 zoning district.

PREMISES AFFECTED – 355 West 255th Street, northwest corner of West 255th Street and Fieldston Road, Block 5846, 5848, Lots 1605, 1774, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to April 25,

2006, at 10:00 A.M., for continued hearing

1038-80-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corp, lessee.

SUBJECT – December 1, 2005 - Extension of Term of a Special Permit for an amusement arcade (UG15) in an M2-1 zoning district which expired on January 6, 2006.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Patricia Prothro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to April 25, 2006, at 10 A.M., for decision, hearing closed.

7-95-BZ

APPLICANT – Francis R. Angelino, Esq., c/o DeCampo, for Redmont Realty Company, LLC, owner; Town Sports International, Inc., lessee.

SUBJECT – Application September 13, 2005 – Reopening for an extension of term and an amendment of a previously granted variance to permit, in a C1-2(R3-2)/R3-2 district, a physical culture establishment (health club) in a cellar and two-story building within a larger shopping center development, which does not conform to district use regulations.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to April 11, 2006, at 10 A.M., for decision, hearing closed.

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280-01-BZ

APPLICANT – Stadtmauer Bailkin LLP & Cozin O’Connor, for Perbinder Holdings, LLC, owner; Metropolitan Transportation Auth., lessee.

SUBJECT – Application January 23, 2006 – Extension of Time to complete construction for a variance ZR §72-21 to permit a mixed use building located in a C1-9 zoning district. PREMISES AFFECTED – 663/673 Second Avenue & 241/249 East 36th Street, Block 917, Lots 21, 24/30, 32 & 34, Borough of Manhattan.

COMMUNITY BOARD #6

APPEARANCES –

For Applicant: Peter Geis and Steve Sinacori.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to April 11, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

144-05-BZY

APPLICANT – Alfonso Duarte, for Bel Homes, LLC, owner. SUBJECT – Application June 9, 2005 – Proposed extension of time to complete construction pursuant to Z.R. 11-331 for two-two family attached dwellings.

PREMISES AFFECTED – 143-53/55 Poplar Avenue, northwest corner of Parsons Boulevard, and Poplar Avenue, Block 5228, Lots 32 and 34, Flushing, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Alonso Duarte.

For Opposition: Robert Tucker, Beverly McDermott, Joe Amoroso and Sally Kahn.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to May 9, 2006, at 10 A.M., for decision, hearing closed.

155-05-A

APPLICANT – Richard Kusack, neighbor; 81 East Third Street Realty, LLC, owner.

SUBJECT – Application filed on June 30, 2005 – for an appeal of the Department of Buildings decision dated May 27, 2005 rescinding its Notice of Intent to revoke the approvals and permit for Application No. 102579354 for a community facility (New York Law School) in that it allows violations of the Zoning Resolution and Building Code regarding bulk, light, air, and unpermitted obstructions in rear yards.

PREMISES AFFECTED – 81 East 3rd Street, Manhattan, Block 445, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jack Lester and Richard Kusack.

For Administration: Felicia Miller, Department of Buildings.

For Opposition: Margery Perlmutter.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to April 25, 2006, at 10 A.M., for decision, hearing closed.

190-05-A

APPLICANT – Stadtmauer Bailkin, LLP, for John Antzoulis, owner.

SUBJECT – Application filed on August 12, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R2 zoning district. Current Zoning District is R2A.

PREMISES AFFECTED - 28-32 215th Street, east side of 215th Street, between 28th Avenue and 29th Avenue, Block 6016, Lot 56, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Neil Weisbard.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to May 16, 2006, at 10 A.M., for decision, hearing closed.

222-04-A thru 224-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, & Spector, LLC for Dalip Karpuzi, owner.

SUBJECT - Application filed June 1, 2004 - to permit construction of a three one family dwellings in the bed of a final mapped street (Pemberton Avenue) contrary to Article 3, Section 35 of the General City Law . Premises is located within an R3-1 (SRD) Zoning District.

PREMISES AFFECTED - 486 Arthur Kill Road, & 120 , 122 Pemberton Avenue Block 5450, Lots 37, 35 & 36, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to May 9, 2006, at 10 A.M., for continued hearing.

370-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg & Spector , LLC for Edgewater Developers and Builders. Inc., Owner.

SUBJECT – Application November 23, 2004 – to permit

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construction of a one family dwelling in the bed of a final mapped street (Egdewater Road) contrary to Article 3, Section 35 of the General City Law. Premises is located within an R2 Zoning District.

PREMISES AFFECTED - 1511 Egmont Place, north side of Egmont Place 705.9 ft east of Mott Avenue, Block 15685, Lot 48, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to May 9, 2006, at 10 A.M., for continued hearing.

370-05-BZY

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for Affirmation Arts Limited, owner.

SUBJECT - Application December 22, 2005 - Proposed extension of time to complete construction pursuant to Z.R. 11-332 for a one story and mezzanine addition to an existing three-story building, previously located in a C6-2(CC) zoning district. The current zoning district is now C6-2(HY).

PREMISES AFFECTED - 523 West 37th Street, interior lot, block bounded by West 37th and West 38th Streets, Tenth and Eleventh Avenues, Block 709, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: James P. Power and Dawn Thompson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to April 11, 2006, at 10 A.M., for decision, hearing closed.

371-05-A

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for Affirmation Arts Limited, owner.

SUBJECT - Application December 22, 2005 - An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to complete construction pursuant to Z.R. 11-332 for a one story and mezzanine addition to an existing three-story building, previously located in a C6-2(CC) zoning district. The current zoning district is now C6-2(HY).

PREMISES AFFECTED - 523 West 37th Street, interior lot, block bounded by West 37th and West 38th Streets, Tenth and Eleventh Avenues, Block 709, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: James P. Power and Dawn Thompson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to April 11, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: 11:20 A.M.

REGULAR MEETING TUESDAY AFTERNOON, MARCH 28, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

245-04-BZ

APPLICANT – Agusta & Ross, for Mark Stern, owner.

SUBJECT – Application July 6, 2004 – under Z.R. §72-21 to permit the proposed five-story, nine unit multiple dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 102/04 Franklin Avenue, west side, 182’ south of Park Avenue, Block 1898, Lots 45 and 46, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 23, 2004, acting on Department of Buildings Application No. 301668791, reads in pertinent part:

“Proposed new building in a manufacturing zoning district is contrary to Z.R. Section 42-00”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an M1-1 zoning district, a three-story plus basement residential development with five dwelling units, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 14, 2005, after due notice by publication in the *City Record*, with continued hearings on August 16, 2005 and September 27, 2005, and deferred decision dates on November 15, 2005, January 24, 2006, and March 14, 2006, and then to decision on March 28, 2006; and

WHEREAS, due to lack of prosecution, the matter was at

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one time considered for dismissal; and

WHEREAS, subsequent to a further submission from the applicant, the Board agreed to maintain the application on the zoning calendar; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, Community Board 3, Brooklyn, did not provide a recommendation on this application; and

WHEREAS, the subject premises is located on the westerly side of Franklin Avenue, between Myrtle and Park Avenues, and is a 4,775.31 sq. ft. vacant site consisting of two tax lots (45 and 46); and

WHEREAS, the applicant states that the site was formerly improved upon with a multiple dwelling constructed around 1918, which existed on the site until demolished in 1984; and

WHEREAS, the applicant states that the site was used thereafter for automotive storage and illegal repair uses, as well as rubbish removal; and

WHEREAS, the applicant proposes to construct a three-story plus basement residential building, with five units, a street wall and total height of 39'-11", a total residential floor area of 12,921 sq. ft., a total residential FAR of 2.7, a front yard of 5'-0", a rear yard of 30'-0", and one off-street parking space; and

WHEREAS, a therapeutic swimming pool and gym for handicapped children residing in the building will be located in the basement, and the residential units will be located on the upper floors; and

WHEREAS, at the time of initial application, the applicant proposed a five-story building with nine units, an FAR of approximately 3.90, a total height of 70'-2", and a street wall height of 49'-6"; and

WHEREAS, the Board objected to this proposed building because it was excessively large in terms of height and floor area when compared to the surrounding buildings, and directed the applicant to reduce its size; and

WHEREAS, subsequently, the applicant proposed a five-story building with six units and an FAR of 3.05, a total height of 70'-0", and a street wall height of 51'-6"; this was also rejected by the Board as too large; and

WHEREAS, the applicant subsequently revised the proposal to the current version; and

WHEREAS, in addition, the Board made suggestions to the applicant as to the lowest level, which was originally proposed as a cellar, but which was later designed as a basement; and

WHEREAS, specifically, the Board asked the applicant to ensure that the proposed basement would not extend into the rear yard, as a basement is not a permitted obstruction; and

WHEREAS, after repeatedly being asked to address these concerns, the applicant finally submitted corrected plans showing an appropriate basement; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable

regulations: (1) the site is too small for creation of a conforming building with floor plates sufficient for modern manufacturing uses; (2) the site contains rubble from the foundations of the prior buildings; and (3) the site is adjacent to residential uses; and

WHEREAS, at the outset, the Board rejects the second and third bases of alleged uniqueness, in that neither of these conditions pose significant hardship to conforming development; and

WHEREAS, as to the lot size, the Board agrees that the size of the site inhibits the development of a conforming manufacturing building, because the floor plates in a conforming building would be of insufficient size and impractical layout, and therefore not suitable for a modern conforming user; and

WHEREAS, however, the Board asked the applicant to reinforce the uniqueness of this condition; and

WHEREAS, the applicant submitted an analysis of vacant lots as indicated on a revised area map, and distinguished those in the subject zoning district as either being occupied for parking or contractor storage use; and

WHEREAS, the Board also observed on its site and neighborhood visit that the site is one of the few similarly sized vacant sites within the subject zoning district; and

WHEREAS, further, the Board's review of the area map submitted by the applicant confirms that on the subject block, the site is one of four similarly sized or smaller sites; and

WHEREAS, the Board also notes that while there are more than four vacant lots on the block, the subject site is one of the few with a limited depth, or that can not be combined with other lots to create a better site for conforming development; and

WHEREAS, accordingly, the Board finds that one of the aforementioned unique physical conditions, namely, the site's small size, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenario: a conforming one-story manufacturing/commercial building; and

WHEREAS, the applicant concluded that such a scenario would result in a loss; and

WHEREAS, however, the Board had concerns regarding certain aspects of this study; and

WHEREAS, specifically, the Board asked the applicant for elaboration as to the effect of the lot size on the return for a conforming use; and

WHEREAS, the applicant responded that conforming users who needed 5,000 sq. ft. or less typically would locate within larger developments; since no single tenant or user constitutes a large proportion of the space, financing options for such a small user are improved overall; and

WHEREAS, the Board also asked the applicant to submit additional comparables to further support the claimed site valuation; and

WHEREAS, the applicant submitted five additional comparables, used them in a revised site valuation analysis, and

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concluded that the site valuation would not be substantially different; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to the proposed residential use, the Board observes that the subject site is adjacent to residential uses, and that there are numerous residential uses on both sides of the street; and

WHEREAS, the Board finds that the introduction of five dwelling units on this street will not impact nearby conforming uses nor change the character of the neighborhood; and

WHEREAS, as to the proposed bulk, the Board requested that the applicant reduce the height and bulk of the proposed building to be more in context with the surrounding buildings; and

WHEREAS, the Board observes that one adjacent building is four stories and the other is three and that most of the residential buildings in the immediate area have similar heights; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, during the course of the public hearing process, the Board asked the applicant to reduce the size of the proposed building to the current version; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA001K, dated July 14, 2004; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials;

Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Landmarks Preservation Commission (LPC) has reviewed an Environmental Assessment Statement Form, dated July 14, 2004, and prepared by the applicant's consultant; and

WHEREAS, LPC requested that an archaeological documentary study be completed for the proposed development; LPC's request for this study was based on the presence of potentially significant archaeological resources on the site; and

WHEREAS, a Restrictive Declaration was executed on March 24, 2006 and recorded on March 27, 2006, to address archaeological concerns; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance to permit, on a lot within an M1-1 zoning district, a three-story plus basement residential development with five dwelling units, which is contrary to ZR §42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 10, 2006"-(10) sheets; and *on further condition*:

THAT the applicant or any successor in title shall adhere to all requirements for archaeological identification, investigation, and mitigation as set forth in the CEQR Technical Manual and LPC's Guidelines for Archaeological Work in NYC, including without limitation, the completion of an archaeological documentary study, any required field testing, excavation, mitigation, curation of archaeological resources, and a final archeological report, as required by the LPC, and as memorialized in the Restrictive Declaration executed on March 24, 2006 (collectively, the "Archaeological Work");

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor shall perform all of the Archaeological Work to the satisfaction of LPC and submit a written report that must be approved by LPC; the only exception to this condition shall be those soil disturbing activities necessitated by the applicant's

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performance of the Archaeological Work required for LPC's approval (such as the digging of archaeological "pits") that may require a DOB permit;

THAT any DOB permit issued for soil disturbing activities pursuant to this exception shall clearly state on its face that such soil disturbance is limited to that necessary to perform the mandated archaeological work;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the Chairperson of LPC shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Archaeological Work has been completed to the satisfaction of LPC;

THAT the following shall be the bulk parameters of the proposed building: a residential and total FAR of 2.7; three stories plus a basement; a street wall height of 39'-11"; a total height of 39'-11"; five dwelling units; a five ft. front yard; and 30'-0" rear yard; lot coverage of 66.3 percent; and one parking space;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 28, 2006.

129-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Laurence Roberts, owner.

SUBJECT – Application May 24, 2005 - Special Permit under ZR §§73-622 to allow the enlargement of a single family residence which is contrary to ZR 23-141 for floor area and open space and ZR 23-47 for rear yard waiver. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1161 East 21st Street, East 21st Street, between Avenue J and Avenue K, Block 7603, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman and David Shteierman.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

Adopted by the Board of Standards and Appeals, March 28, 2006.

179-05-BZ

APPLICANT – Harold Weinberg, P.E., for Steven Goldfarb, owner.

SUBJECT – Application August 3, 2005 – Special Permit pursuant to ZR §73-622 for a two story rear enlargement to a single family semi-detached home to vary Z.R. §23-14 for floor area and open space, Z.R. §23-47 for less than the required rear yard, Z.R. §23-641 for less than the required side yard and Z.R. §23-631 for total height. The premise is in an R3-1 zoning district.

PREMISES AFFECTED – 139 Langham Street, east side 311'-8 7/8" south of Shore Boulevard, Block 8755, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 27, 2006, acting on Department of Buildings Application No. 301981069, reads, in pertinent part:

“The proposed enlargement of the two-story residence in an R3-1 zoning district:

1. Creates a new non-compliance with respect to floor area ratio and is contrary to Section 23-141.
2. Creates a new non-compliance with respect to lot coverage and open space and is contrary to Section 23-141.
3. The proposed enlargement creates a new non-compliance by encroaching on the required 30' rear yard and is contrary to Section 23-47.
4. The proposed enlargement increases the degree of non-compliance with respect to a deficient side yard and is contrary to sections 23-461(b) and 54-31.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the proposed enlargement of an existing semi-detached single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), Open Space Ratio (OSR), and side and rear yards, contrary to ZR §§ 23-14, 23-47, and 23-461; and

WHEREAS, a public hearing was held on this application on March 14, 2006, after due notice by publication in *The City Record*, and then to decision on March 28, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

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WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the east side of Langham Street, south of Shore Boulevard; and

WHEREAS, the subject lot has a total lot area of 2,000 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 927.4 sq. ft. (0.46 FAR) to 1,640 sq. ft. (0.82 FAR); the maximum floor area permitted is 1,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the OSR from 76.8 percent to 58.7 percent; the minimum required OSR is 65 percent; and

WHEREAS, the proposed enlargement of the existing building will increase the degree of non-compliance for the side yard by building in the place of an existing un-enclosed rear deck to make it aligned with the rest of the building; however, the 4 ft. width of the sole side yard will be maintained; and

WHEREAS, the proposed enlargement will reduce the rear yard from 45' to 24'-10"; the minimum rear yard required is 30'-0"; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the existing non-complying wall height of 25 ft. will be maintained; and the existing complying total height of 28 ft. will be maintained; and

WHEREAS, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of an existing semi-detached single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, Open Space Ratio, and side and rear yards, contrary to ZR §§ 23-14, 23-47, and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 31, 2006"-(8) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar; THAT the above condition shall be set forth in the certificate of occupancy;

THAT the total FAR on the premises shall not exceed 0.82;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 28, 2006.

285-05-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Robert E. Benson, owner.

SUBJECT – Application September 13, 2005 – Pursuant to Section ZR §72-21 for a variance for the proposed enlargement of an existing one-family dwelling that will not provide the required front yard, ZR §23-45 and rear yard, ZR §23-47. The premise is located in an R1-2 (HS) Hillside Preservation District.

PREMISES AFFECTED – 34 Duncan Road, West side of Duncan Road 163' North of intersection with Theresa Place, Block 591, Lot 52, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated September 6, 2005, acting on Department of Buildings Application No. 500793331, reads:

- “1. In an R1-2 district, the proposed enlargement of an existing residence within a required 30' rear yard is contrary to Section 23-47 of the NYC Zoning Resolution.
2. In an R1-2 district, the proposed enlargement of an existing residence within a required 20' front yard is contrary to Section 23-45 of the NYC Zoning Resolution.”; and

WHEREAS, this is an application under ZR §72-21, to permit, in an R1-2 zoning district within the Special Hillside

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Preservation District, the proposed enlargement of an existing one- and two-story plus cellar single family home within non-complying front and rear yards, contrary to ZR §§ 23-45 and 23-47; and

WHEREAS, a public hearing was held on this application on March 7, 2006, after due notice by publication in The City Record, and then to decision on March 28, 2006; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the City Councilman for the 49th District, Michael E. McMahon, objects to this application, citing concerns about the site's location in the Special Hillside Preservation District; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Chin; and

WHEREAS, the site is located on the west side of Duncan Road, 163 feet north of the intersection with Theresa Place; and

WHEREAS, the site is 75.5 ft. in width and 35.4 ft. in length, with a total lot area of 3,460 sq. ft.; and

WHEREAS, the site is currently improved upon with a 1,145 sq. ft. one- and two-story single family home and a one-story detached garage; and

WHEREAS, the applicant proposes to construct a one-story enclosure around the existing front entry and to construct a one-story horizontal enlargement and two-story vertical enlargement in the rear which would square off the existing one-story section of the house; and

WHEREAS, the resulting enlargement will result in a residence with a floor area that is 1,551 sq. ft. (FAR of 0.45); the total allowable residential floor area is 1,730 sq. ft. (FAR of 0.5); and

WHEREAS, for a residence in an R1-2 zoning district within the Special Hillside Preservation District, the required front yard is 20 ft.; the required rear yard is 30 ft.; and side yards are required to be 8 ft. and 12 ft.; and

WHEREAS, the existing home has a non-complying front yard of 7.33 ft., a non-complying rear yard of 4.59 ft., and complying side yards of 8.09 ft. and 33 ft.; and

WHEREAS, although the yards' depths will remain the same, the proposed enlargement will increase the degree of non-compliance for the front and rear yards because the encroachments will be within the non-complying yards; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is an irregularly shaped lot with 75.5 ft. of frontage on Duncan Road and a depth of only 35.4 ft., with existing non-complying front and rear yards; and

WHEREAS, the applicant further states that the requested variances are necessary in order to utilize allowable floor area; and

WHEREAS, therefore, the Board finds that the cited unique physical conditions, namely the shallowness of the lot and its irregular shape, create practical difficulties in

developing the site in strict compliance with the referenced zoning regulations; and

WHEREAS, the applicant represents that in order to accommodate the floor area allowed under the zoning, the requested waivers are necessary as there is no other viable enlargement option; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that an enlargement using available floor area will comply with the applicable zoning requirements; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant represents that the proposed residence will comply with the Special Hillside Preservation District and the proposed additions will comply with the district's bulk parameters; and

WHEREAS, the radius map submitted by the applicant reflects that the subject site is not only irregularly-shaped, but has the shortest depth, and is among the smallest, of the 20 lots within the radius; and

WHEREAS, further, the applicant states that the proposed overall height, at 19 ft., remains the same and that the property is surrounded by sizeable neighboring yards; and

WHEREAS, the applicant states that the proposed structure will contain 1,551 sq. ft. of floor area, while 1,730 sq. ft. is permitted as of right within the underlying zoning district; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R1-2 zoning district within the Special Hillside Preservation District, the proposed enlargement of an existing one- and two-story plus cellar single family home, within non-complying front and rear yards, contrary to ZR §§ 23-45 and 23-47; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 24, 2006"--(4) sheets; and on further condition:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.45; a floor area of 1,551 sq. ft.; side yards of 8.09 ft. and 33 ft.; a front yard of 7.33 ft.; and a rear

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yard of 4.59 ft.;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 28, 2006.

301-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Jeanette Impaglia, owner.

SUBJECT – Application October 12, 2005 – Special Permit Under §73-36 to permit the operation of a Physical Culture Establishment on the second floor mezzanine of a building located within a C6-3X.

PREMISES AFFECTED – 410 8th Avenue, located on the East side of 8th Avenue between 30th and 31st Streets, Block 780, Lot 76, Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 12, 2005, acting on Department of Buildings Application No. 104165653, reads, in pertinent part:

“Proposed use physical culture establishment is not permitted as of right and is contrary to ZR 32-10.”; and

WHEREAS, this is an application under ZR §§73-36 and 73-03, to permit, within a C6-3X zoning district, a proposed physical culture establishment (“PCE”) to be located on the second floor mezzanine of an existing building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 7, 2006, after due notice by publication in *The City Record*, and then to decision on March 28, 2006; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the New York City Fire Department has

indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the east side of Eighth Avenue, between 30th and 31st Streets, and has a lot area of 2,500 sq. ft.; and

WHEREAS, the subject PCE will occupy 1,996 sq. ft. on the second floor mezzanine; and

WHEREAS, the applicant represents that the PCE will provide massage services by licensed massage professionals; and

WHEREAS, the PCE will have the following hours of operation: daily, 10:00 AM to 1:00 AM; and

WHEREAS, at hearing, the board raised the issue of how access would be granted to the second floor mezzanine; and

WHEREAS, the applicant responded that there is a common doorway serving the buildings at 410 and 412 Eighth Avenue which allows for ingress and egress for both buildings and that visitors to the PCE will be buzzed into the building after ringing the intercom for the PCE; and

WHEREAS, further, the applicant responded that there is an easement recording the shared use of the entrance; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06-BSA-022M, dated October 12, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise;

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Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C6-3X zoning district, a proposed physical culture establishment to be located on the second floor mezzanine of an existing building; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received December 30, 2005"-(1) sheet; and on further condition:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on March 28, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to daily, 10:00AM to 1:00AM;

THAT all massages shall be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT an easement granting common ingress and egress for 410 and 412 Eighth Avenue will be maintained;

THAT the recording information for the easement shall be listed on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 28, 2006.

72-05-BZ

APPLICANT – Harold Weinberg, P.E., for Cong. Shomlou by Rabbi Marton Ehrenreich, owner.

SUBJECT – Application March 23, 2005 – Under Z.R. §72-21 to permit the proposed erection of a synagogue and yeshiva, with accessory residences, Use Groups 2 and 4,

located in an R6 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, rear yard and open space ratio, is contrary to Z.R. §§24-11, 23-142, 24-36 and 24-12.

PREMISES AFFECTED – 245 Hooper Street, north side, 205' east of Marcy Avenue, between Marcy and Harrison Avenues, Block 2201, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for decision, hearing closed.

119-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sam Malamud, owner.

SUBJECT – Application May 16, 2005 – Under Z.R. §72-21 to permit the proposed enlargement to an existing one and two story warehouse building, with an accessory office, Use Group 16, located in a C4-3 and R6 zoning district, which does not comply with the zoning requirements for floor area, floor area ratio, perimeter wall height, parking and loading berths, is contrary to Z.R. §52-41, §33-122, §33-432, §36-21 and §36-62.

PREMISES AFFECTED – 834 Sterling Place, south side, 80' west of Nostrand Avenue, Block 1247, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

124-05-BZ

APPLICANT – Greenberg Traurig, LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.

SUBJECT – Application May 20, 2005 – Under Z.R. §72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to ZR §35-00, 23-145, 35-52, 23-82, 13-143, 35-24, and 13-142(a).

PREMISES AFFECTED – 482 Greenwich Street, Block 7309, Lot 21 and 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

128-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for

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Yisroel Y. Leshkowitz & Esther S. Leshkowitz, owner.
SUBJECT – Application May 24, 2005 – under Z.R. §73-622 – to permit the proposed enlargement of an existing single family residence, located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and rear yard, is contrary to Z.R. §23-141, §23-461 and §23-47.

PREMISES AFFECTED – 1406 East 21st Street, between Avenue “L” and “M”, Block 7638, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteirman.

ACTION OF THE BOARD – Laid over to May 9, 2006, at 1:30 P.M., for continued hearing.

163-05-BZ

APPLICANT – Harold Weinberg, for Aaron (Ari) Presser, owner.

SUBJECT – Application July 19, 2005 – Special Permit – pursuant to ZR §73-622 for the enlargement of single family home which seeks to vary ZR §23-141 for the increase in floor area and open space ratio, ZR §23-47 for less than the minimum 30' rear yard required and ZR §23-461 for less than the required side yard. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1134 28th Street, west side, 260' south of Avenue K, Block 7627, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for decision, hearing closed.

182-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4 Park Avenue Associates, owner.

SUBJECT – Application August 4, 2005 – Under Z.R. §73-36 to allow the legalization of a physical culture establishment in a C5-3 zoning district.

PREMISES AFFECTED – 4 Park Avenue, between East 33rd and East 34th Streets, Block 863, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

187-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Salvatore Porretta and Vincenza Porretto, owners.

SUBJECT – Application August 9, 2005 – under Z.R. §72-21– Propose to build a two family dwelling that will comply with all zoning requirements with the exception of two non-complying side yards and undersized lot area due to a pre-existing condition.

PREMISES AFFECTED – 78-20 67th Road, Southerly side of 67th Road, 170' easterly of 78th Street, Block 3777, Lot 17, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

193-05-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 32 East 31st Street Corp., owner; Forever Young Spa Inc., lessee.

SUBJECT – Application August 16, 2005 – Under Z.R. 73-36 to allow the operation of a physical culture establishment in the cellar, first floor and first floor mezzanine of a ten story commercial building which is contrary to §32-21 Z.R.

PREMISES AFFECTED – 32 East 31st Street, East 31st Street between Park and Madison Avenues, Block 860, Lot 55, Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for decision, hearing closed.

202-05-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.

SUBJECT – Application August 24, 2005 – Under Z.R. to §73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district.

PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik, Steve Chon, Hiram Rothkrug, Sean McNicholas, Justin K and Vincent Randazzo.

For Opposition: Councilmember Avella, Ivan Vost for Senator Padavan, Fred W. Mazzarello for College Point Board of Trade, Michael A. Delligati, John Azzara, Kathleen

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Georgio, Matha Association, Pauline Giudice, Mario Ciomiso, Maria Jones and others.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

323-05-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for DB Real Estate Enterprises, LLC, owner.

SUBJECT – Application November 9, 2005 – Under Z.R. §72-21 to allow a proposed two-family dwelling that does not provide a required side yard in an R5 Zoning District; contrary to Z.R. §23-461(b).

PREMISES AFFECTED – 488 Logan Street, West side of Logan Street, 190ft south of intersection with Pitkin Avenue, Block 4227, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Adam Rothkrug

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 4:25 P.M.

SPECIAL HEARING WEDNESDAY MORNING, MARCH 29, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.

350-05-BZY

APPLICANT – Eric Palatnik, P.C., for 49 Properties, LLC, owner.

SUBJECT – Application December 08, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 4 story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 245 16th Street, Brooklyn, north side between 4th and 5th Avenue, Block 1048, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Adam Rothkrug

For Opposition: Marie Ciccone and others.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

353-05-BZY

APPLICANT – Cozen & O'Connor for Emet Veshlom Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis

For Opposition: Councilmember Tony Avella, Randy Pears, John Burns, Viriana Varquez, Amanda Miller Mic Holwin, Robert Furman, Bill De Blasio, Sara Gonzalez, Russell W. Wylig, Steve Surfaro, Nicholas Avallone, Todd Higgins, Tom Toomey, Monica Statin and others.

For Administrative: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

354-05-BZY

APPLICANT – Cozen & O'Connor for Global Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a 62 unit 11 story multiple dwelling under the prior Zoning R6. New Zoning District is R6B/ C2-3 as of November 16, 2005.

PREMISES AFFECTED – 182 15th Street, Brooklyn, south side of 15th Street, 320 feet west of 5th Avenue, Block 1047, Lot 22 Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

For Opposition: Caroline Harris, Ralph Perfetto, John Keefe, Daniel Wiley, Nicholas Enrich, Edna M. Johnson, John Burns, Joe Levine, Ann Schaetzel, Jane Cyphers, Mark King, John Rice and others.

For Administration: Janine Gaylord, Department of Buildings.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

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355-05-BZY

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue, Block 869, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Adam Rothkrug and Eric Nachowskousky.

For Opposition: ?

For Administration: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

360-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, Brooklyn, south side of 15th Street, 205' feet 5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deidre A. Carson and Leonid Krupnik.

For Opposition: John Keefe, Assemblyman Brennan.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

362-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th LLC, owner.

SUBJECT – Application December 16, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a six story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, Brooklyn, east side of Sixth Avenue 128'2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deidre Carson.

For Opposition: John Keefe for Assemblyman Brennan, Mic Holwin, Aaron Brashear and Ella Wigh.

For Administration: Angelino Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

367-05-A

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th Avenue, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, east side of Sixth Avenue, 128'2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

368-05-A

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, south side of 15th Street, 205'-5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 12:00 P.M.

BULLETIN

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April 13, 2006

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

SATISH BABBAR, *Vice-Chair*

JAMES CHIN

CHRISTOPHER COLLINS

Commissioners

Jeffrey Mulligan, *Executive Director*

Roy Starrin, *Deputy Director*

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New Case Filed Up to April 4, 2006

58-06-BZ

499 Broadway, Through lot running between Broadway and Mercer Street approximately 100 feet north of Broome Street., Block 484, Lot 23, Borough of **Manhattan**, **Community Board: 2**. Under 72-21 - To allow the conversion of the first floor and cellar to commercial (UG6), which is contrary to Section 42-10 of the ZR.

59-06-BZ

1006 East 233rd Street, Southeast corner of Paulding Avenue., Block 4879, Lot 40, Borough of **Bronx**, **Community Board: 12**. Under 72-21 - Propose to remove existing retail store (UG6) at front of perperty and construct three (3) new retail stores (UG6) along rear property line with accessory parking and an illuminated ground sign at the intersection.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

MAY 9, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 9, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

APPEALS CALENDAR

206-05-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Joanne & Thomas DeRosa, lessee. SUBJECT – Application September 6, 2005 – Proposed construction of an existing single family frame dwelling situated in the bed of a mapped street contrary to General City Law Article 3, Section 35 and upgrading an existing private disposal system which is contrary to Department of Buildings policy. Premises is located within an R4 zoning district.

PREMISES AFFECTED – 9 Bayside Drive, in the bed of Bayside Drive 109.72 northwest of Rockaway Point Boulevard, Block 16340, part of Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

294-05-A thru 296-05-A

APPLICANT – Rothkrug RothkrugWeinberg & Spector, LLP for Pleasant Place, LLC, owner.

SUBJECT – Application September 29, 2005 – Proposed construction of three two- family homes not fronting on a mapped street is contrary to GCL 36, Article 3. Current R3-2 Zoning District.

PREMISES AFFECTED – 146-34, 36, 38 Pleasant Place, Queens, West side of Pleasant Place, 100ft north of intersection with 146th Drive, Block 13351, Tentative Lot #s 100, 101, 103, Borough of Queens

COMMUNITY BOARD #13Q

372-05-BZY/373-05-BZY

APPLICANT – Adam Rothkrug, for Woodrow Estates North LLC, owner.

SUBJECT – Application December 27, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R4 Zoning District. Current R3-A (HS) Zoning District.

PREMISES AFFECTED – 28 Webster Avenue (aka 101 Stanley Avenue) Block 111, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 9, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

15-06-BZ

APPLICANT – Eric Palatnik, PC for the Yeshiva Tifereth Moshe, Owner.

SUBJECT – Application January 26, 2006 – Zoning Variance (bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the construction of a new yeshiva located in an R4 zoning district. The proposed variance would allow modifications of zoning requirements for lot coverage, side yards, rear yard and height and setback; contrary to Z.R. §§24-11, 24-35, 24-36, 24-521 and 24-551.

PREMISES AFFECTED – 147-22 73rd Avenue located on the south side of 73rd Avenue between 147th and 150th streets (Block 6682, Lots 11 & 13), Borough of Queens

COMMUNITY BOARD #8Q

Jeff Mulligan, Executive Director

MAY 9, 2006, 1:30 P.M.

MINUTES

REGULAR MEETING TUESDAY MORNING, APRIL 4, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, January 31, 2006, were approved as printed in the Bulletin of February 9, 2006, Volume 91, No. 6. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

148-03-BZ

APPLICANT – Francis R. Angelino, Esq., for North West Real Estate, LLC, owner.

SUBJECT – Application August 18, 2005 – Reopening for an amendment to a previously approved five story and penthouse mixed commercial and residential building to add a mezzanine in the residential penthouse, located in an M1-6 zoning district.

PREMISES AFFECTED – 111/13 West 28th Street, between Sixth and Seventh Avenues, 164’-4” west of Sixth Avenue, Block 804, Lots 1101-1105 (formerly 28 and 29), Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino and David W. Sinclair.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance; and

WHEREAS, a public hearing was held on this application on February 14, 2006, after due notice by publication in *The City Record*, with a continued hearing on March 14, 2006, and then to decision on April 4, 2006; and

WHEREAS, the subject site is located on the north side of West 28th Street, west of Sixth Avenue; and

WHEREAS, on October 23, 2003, the Board granted an application under ZR §72-21, to permit, in an M1-6 zoning district, the development of residential condominiums (Use Group 2) in an existing building and the legalization of the existing residential units; and

WHEREAS, on December 10, 2004, the Board approved, by letter, the applicant’s request for minor changes to the approved plans, including moving the penthouse façade wall 1’-0” to the south to accommodate a new fire stair/elevator wall and reducing the overall height of the street wall by 5’-2”;

WHEREAS, the applicant represents that lowering the

street wall, resulted in the penthouse floor having a height of 17 ft.; and

WHEREAS, the applicant further represents that structural brace beams will be added to support the 17 ft. columns within the penthouse walls; and

WHEREAS, the applicant proposes to use the brace beams at the rear of the penthouse to support a mezzanine of approximately 1,075.4 sq. ft.; and

WHEREAS, the mezzanine would be completely within the approved exterior envelope of the building and would not result in any exterior changes; and

WHEREAS, the applicant states that even with the addition of the mezzanine, the revised FAR of 5.19 (4.76 was previously approved) is well below the permitted FAR of 10.0 permitted in the zoning district; and

WHEREAS, the applicant provided a feasibility study noting that this minor change only slightly increases the rate of return, but makes the project feasible; and

WHEREAS, the Board finds that this minor change does not affect the finding that the approved variance is the minimum necessary to afford relief; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on October 23, 2003, so that as amended this portion of the resolution shall read: “to permit the construction of a penthouse mezzanine; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received March 21, 2006”-(4) sheets; and *on further condition*:

THAT the maximum FAR shall be 5.19;

THAT the addition of the penthouse mezzanine will not alter the exterior of the building;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 103390910)

Adopted by the Board of Standards and Appeals, April 4, 2006.

540-53-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Marbridge Realty Co., Inc., owner.

SUBJECT – Application October 25, 2005 – Extension of

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Term/Waiver for an existing parking lot accessory to a commercial building. The premise is located in a C2-4 and R3-1 zoning district.

PREMISES AFFECTED – 87-17 111th Street, Block 9301, Lots 124, 125, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to May 2, 2006, at 10 A.M., for decision, hearing closed.

295-77-BZ

APPLICANT – Walter T. Gorman, P.E., for Alfred M. Lama, Barnik Associates, LLC, owner.

SUBJECT – Application September 27, 2005 – Extension of Term/Waiver of a variance Z.R. §72-21 for the continued use of a gasoline service station which expired on October 1, 2003 for an additional ten (10) years; and an amendment to legalize the conversion of a portion of the service building from office/sales and attendant’s area to an accessory convenience store, the erection of a trash enclosure, air pump tower and car vacuum, a public telephone and wooden planter boxes. The premise is located in an C1-2 in R4 zoning district.

PREMISES AFFECTED – 87-10 Northern Boulevard, southside blockfront between 87th and 88th Streets, Block 1435, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

545-78-BZ

APPLICANT – Petraro & Jones, LLP, for Cotaldo Vasapolli, owner.

SUBJECT – Application January 15, 2004 – Reopening for an extension of the term of a variance for a commercial vehicle storage establishment in an R4 zoning district. The term expired on March 27, 2002. The application also seeks a waiver of the Board’s rules of practice and procedure for an extension of term application filed more than one year, but less than two years, following expiration of the term. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 901/903 Pine Street, West side of Pine Street, 250 feet north of the intersection of Pine Street and Cozine Avenue, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Patrick Jones.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

231-04-A

APPLICANT – Joseph P. Morsellino, Esq., for Chri Babatsikos and Andrew Babatsikos, owners.

SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243rd Street, Block 8103, Lot 5, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Joseph Morsellino.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for deferred decision.

162-05-A

APPLICANT – Jay Segal, Esq., Greenberg & Traurig, LLP, for William R. Rupp, owner.

SUBJECT – Application July 15, 2005 – To appeal a final determination from the Department of Buildings dated June 15, 2005 in which they contend that the a privacy wall must be demolished because it exceeds the height limitation set by the Building Code and that the project engineer has failed to show that the Wall has been engineered and built according to code.

PREMISES AFFECTED – 19-21 Beekman Place, a/k/a 461 East 50th Street, located at east side of Beekman Place between East 50th Street and East 51st Street, Block 1361, Lot 117, Borough of Manhattan.

COMMUNITY BOARD#6BK

APPEARANCES –

For Applicant: Jay Segal

For Opposition: Stephen Rizzo.

For Administration: Janine Gaylard, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for decision, hearing closed.

364-05-A & 365-05-A

APPLICANT – Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that that the owner of said premises

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has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 87-30 and 87-32 167th Street, 252’ north of the corner formed by the intersection of Hillside Avenue and 167th Street, Block 9838, Lots 114 and 116, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

For Administration: Janine Gaylard, Department of Buildings.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: A.M.

REGULAR MEETING TUESDAY AFTERNOON, APRIL 4, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

359-04-BZ

APPLICANT – Eric Palatnik, P.C., for Alfred Savegh, owner.

SUBJECT – Application November 12, 2004 – Under Z.R. §73-622 to permit the legalization of an enlargement to an existing single family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio and rear yard, is contrary to Z.R. §23-141 and §23-47.

PREMISES AFFECTED – 1425 East 24th Street, between Avenues "N" and "O", Block 7678, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 14, 2004, acting on Department of Buildings Application No. 300414031, reads,

in pertinent part:

“Proposed legalization of existing floor area ratio (ZR Section 23-141), open space ratio (ZR Section 23-141) and rear yard (ZR Section 23-47) requires a special permit from the New York City Board of Standards and Appeals.”

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the proposed legalization of an existing rear yard enlargement to a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), Open Space Ratio (OSR), and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on March 14, 2006, after due notice by publication in *The City Record*, and then to decision on April 4, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application due to its policy to deny legalizations; and

WHEREAS, the subject lot is located on East 24th Street between Avenue N and Avenue O; and

WHEREAS, the subject lot has a total lot area of 3,500 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant has increased the floor area from the pre-existing 1,966 sq. ft. (0.56 FAR) to 2,366 sq. ft. (0.68 FAR); the maximum floor area permitted is 1,750 sq. ft. (0.50 FAR); and

WHEREAS, the enlargement decreased the OSR from 127 percent to 98 percent; the minimum required OSR is 150 percent; and

WHEREAS, the enlargement reduced the size of the rear yard from 34’-0” to 24’-0”;

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, the complying side yards of 5’-5” and 9’-7”, and complying front yard of 17’-0” have been maintained; and

WHEREAS, both the complying wall height of 20’-1” and the pre-existing non-complying total height of 26’-0” have been maintained; and

WHEREAS, the Board finds that the minor enlargement at the rear of the building neither alters the essential character of the surrounding neighborhood, nor impairs the future use and development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be

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made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed legalization of an existing rear yard enlargement to a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, Open Space Ratio, and rear yard, contrary to ZR §§ 23-14 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "March 21, 2006"-(8) sheets; and *on further condition*:

THAT the total FAR on the premises shall not exceed 0.68;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 4, 2006.

26-05-BZ

CEQR #06-BSA-092K

APPLICANT – Cozen O’Connor, for Tikvah Realty, LLC, owner.

SUBJECT – Application February 11, 2005 – Under Z.R. §72-21 to permit the proposed bulk variance, to facilitate the new construction of an 89 room hotel on floors 4-6, catering facility on floors 1-3, ground floor retail and three levels of underground parking, which creates non-compliance with regards to floor area, rear yard, interior lot, permitted obstructions in the rear yard, setback, sky exposure plane, loading berths and accessory off-street parking spaces, is contrary to Z.R. §33-122, §33-26, §33-432, §36-21, §33-23 and §36-62.

PREMISES AFFECTED – 1702/28 East 9th Street, a/k/a 815 Kings Highway, west side, between Kings Highway and Quentin Road, Block 6665, Lots 7, 12 and 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Barbara Hair.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

Adopted by the Board of Standards and Appeals, April

4, 2006.

130-05-BZ

CEQR #05-BSA-133M

APPLICANT – Elise Wagner, Esq., Kramer Levin, for Hudson Island, LLC, owner.

SUBJECT – Application May 25, 2005 – Under Z.R. §72-21 to permit the development of a mixed-use, nine-story building with ground level retail, and a small amount of community facility space, and approximately 25 residential units on the upper floors within an M1-5B zoning district.

PREMISES AFFECTED – 74-88 Avenue of the Americas, a/k/a 11-15 Thompson Street and 27-31 Grand Street, east side of Avenue of the Americas, between Grand and Canal Streets, Block 227, Lots 50, 52 and 56, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul Selver.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 27, 2004, acting on Department of Buildings Application No. 104062648, reads, in pertinent part:

“The proposed residential use . . . in a M1-5B zoning district is contrary to ZR 42-00 and therefore not permitted.

Proposed commercial use (use group 6) in a M1-5B zoning district is contrary to Z.R. 42-14 D and therefore not permitted.”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a site within an M1-5B zoning district, an eight-story mixed-use residential/retail building with retail space on the ground floor and 23 dwelling units on the upper floors, which is contrary to Z.R. §§ 42-10 and 42-14(D); and

WHEREAS, the applicant proposes to construct an eight-story mixed-use residential and retail building, with 23 residential units and ground floor retail, an 80 ft. street wall, a maximum of 116 ft. in total height (without bulkheads), a maximum of 150 ft. in total height with bulkheads, a total Floor Area Ratio (FAR) of 5.89, a residential FAR of 5.3, and a retail FAR of 0.59; no parking will be provided; and

WHEREAS, the applicant represents that the building will be designed with “green” technology design features that will conserve energy and protect the environment; and

WHEREAS, the applicant initially proposed to construct a nine-story mixed-use residential and retail building, with 25 residential units and ground floor retail and community facility space, an 80 ft. street wall, 116 ft. in total height (without bulkheads), and with a total FAR of 6.5; and

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WHEREAS, a public hearing was held on this application on November 1, 1005, after due notice by publication in the *City Record*, with continued hearings on December 6, 2005, January 24, 2006, March 7, 2006, and then to decision on April 4, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board No. 2, Manhattan, recommends approval of the application on condition that the FAR of the proposed building be limited to 5.0 and that unit size be a minimum of 1,200 sq. ft.; and

WHEREAS, the subject premises is located on the east side of the Avenue of the Americas, between Grand and Canal Streets, and is an 11,330 sq. ft. site consisting of three tax lots (50, 52, and 56); and

WHEREAS, Lot 50 is occupied by a one-story diner, Lot 52 is occupied by a paved parking lot, and Lot 56 is occupied with a two-story garage and photo shop; and

WHEREAS, the applicant states that the existing improvements on the site will be removed; and

WHEREAS, during the hearing process, the Board suggested to the applicant that the initially proposed 6.5 FAR building did not represent the minimum variance, and asked that a reduced FAR building be evaluated and submitted; and

WHEREAS, the applicant subsequently revised the proposal to the current version; the primary modifications were the removal of a courtyard and the elimination of one of the two proposed cores, which were features present in the initial design; and

WHEREAS, the applicant states that these modifications allowed the reduction in FAR and height, and increased the proposed building's ratio of sellable floor area to gross floor area; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is trapezoidal in shape and relatively narrow; (2) the site is burdened with a high water table; (3) the site has a thick and unstable fill layer; (4) the site's soil is contaminated; (5) the site is abutted by two relatively narrow streets on two of its three street frontages; and (6) the site is proximate to active subway tunnels; and

WHEREAS, as an initial matter, the Board observes that while the shape is the result of the merger of the three tax lots, this merger actually helps to alleviate inherent shape and size constraints of each individual tax lot; nonetheless, some hardship based upon shape and size remains; and

WHEREAS, as a further threshold matter, the Board notes that the specific combination of unique physical features, and the degree to which they impact conforming development, is particular to the site; and

WHEREAS, this is evidenced by a map and chart of soft and proposed development sites (some of which have been the subject of Board actions), submitted by the applicant during the

course of the hearing process; and

WHEREAS, the map and chart set forth twelve other sites in the area of the subject site; and

WHEREAS, for nine of these sites, the chart illustrates the sub-surface conditions, the depth to bedrock, and the adjacency of a subway; and

WHEREAS, the chart then provides remarks comparing the nine sites to the subject site; and

WHEREAS, the chart illustrates that unlike the other nine sites, the subject site is the only site that is afflicted by the particular combination of unique physical conditions listed above; and

WHEREAS, while some of the other sites may have similar soil conditions, exposure to floor risk, or adjacency to subways, none suffer all these conditions to the same degree or in the same combination as the subject site; and

WHEREAS, as to those sites that were the subject of Board action, two did not present subsurface conditions as a hardship, one was not adjacent to a subway, and one had less flood risk and the ability to use slightly shorter piles; and

WHEREAS, the Board notes that, in response to its request for further clarification, the applicant explained that while some of the other sites are near subways, the subject site is one of the few in the area where a subway tunnel extends past the curb line onto the property; and

WHEREAS, the applicant also showed that the subway tunnel is located at an unusually shallow depth where it extends into the curb line, and that, in addition to the tunnel, there is a stairwell to the nearby station that must also be protected and which further complicates construction; and

WHEREAS, the Board further notes that the site also suffers from environmental contamination and adjacency to narrow streets; and

WHEREAS, the Board concludes that the subject site is singularly afflicted in terms of the amount of unique physical conditions and the manner in which they combine to affect conforming development; and

WHEREAS, as to the specific features, the applicant states in the February 17, 2006 submission that the combination of the site's unusual proximity to an active subway tunnel, its relative narrowness and trapezoidal shape, and its unstable soil conditions require a drilled piles foundation system, which is more expensive than a typical spread footing foundation system; and

WHEREAS, the applicant supported this statement with a letter prepared by its engineering consultant; and

WHEREAS, specifically, the letter from the engineering consultant states that due to the subsurface conditions consisting of a deep fill layer overlying organic materials deposited in a previous marsh, the building should be supported on deep foundations; and

WHEREAS, the letter goes on to state that the choice of type of piles required for this foundation is constrained by the adjacency of the subway tunnel; and

WHEREAS, the letter concludes that the use of drilled piles may be the best solution because it avoids the use of driven

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piles, which are not permitted by the New York City Transit Authority (TA) in such close proximity to a subway line, and because the poor soil conditions demand drilled piles as a means to minimize vibration that could affect the tunnel even at locations on the site where the TA might allow other types of piles; and

WHEREAS, the applicant further states that because of the proximity of the subway tunnel, the TA is expected to require a test pit, which must be dug by hand to avoid damage to the tunnel; and

WHEREAS, this statement is supported by a letter prepared by the construction consultant; and

WHEREAS, specifically, this letter states that the TA will require an assessment of the subway wall prior to the commencement of construction, which necessitates the digging of a test pit along the tunnel wall; and

WHEREAS, the applicant notes that the combination of the subway tunnel and the narrowness of Grant and Thompson Streets precludes the use of a more economic crawler crane during construction, and instead requires the use of a more expensive tower crane; and

WHEREAS, the applicant also states that the proximity of the tunnel necessitates the placement of steel plates at the subway grating, in order to accommodate the construction bridge and hoist; and

WHEREAS, again, the letter from the construction consultant discusses these problems, noting that the TA will not accept the weight of a crawler crane near the tunnel; and

WHEREAS, the letter also points out that because the tunnel extends past the curb line, the TA is expected to control the construction of the building's foundation over a far higher proportion of the site than it does over property that is separated from a tunnel by a sidewalk width and that has more stable soil conditions; and

WHEREAS, finally, the applicant states that the site's soil and groundwater are contaminated, which must be remediated; and

WHEREAS, this statement is supported by a letter from the applicant's environmental consultant, which describes the type and degree of contamination, caused by past gasoline spills; and

WHEREAS, the Board has reviewed these claims and the evidence submitted in support of them, and agrees that said conditions lead to increased construction costs in developing the site with a conforming development; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenarios: (1) an as of right office scenario, with an FAR of 5.0; and (2) an as of right hotel, with an FAR of 5.0; and

WHEREAS, the applicant concluded that such scenarios

would result in a loss, due to the premium construction costs related to the above-stated unique physical conditions; and

WHEREAS, however, the Board had concerns regarding certain aspects of this study, and identified them at hearing; and

WHEREAS, specifically, the Board questioned: (1) the actual amount of the premium construction costs related to the identified hardships; (2) the claimed overall construction costs; (3) the claimed sell out period; and (4) the comparables uses to establish the sell-out price of the condominium units; and

WHEREAS, the applicant, in subsequent submissions, satisfactorily addressed each of these concerns; and

WHEREAS, the applicant provided more detailed information about the premium construction costs, as well as eliminated certain costs as hardship costs; established that the overall construction costs per square foot were comparable to other similar construction projects, and also updated these costs; modified the sell-out period per the Board's instruction; and revised the site valuation comparables; and

WHEREAS, the eliminated costs included expenditures related to delays associated with the New York City Transit Authority (TA) review period (due to the proximity of the subway), TA communications in general, TA staffing needs during construction, increased perimeter construction, and insulating development from vibrations from the subway; and

WHEREAS, the applicant recharacterized these costs to the base construction budget, and did not claim them as hardship costs; and

WHEREAS, based upon its review of the subsequent submissions of the applicant, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant provided the Board with a detailed description of the neighborhood's use and bulk context; and

WHEREAS, specifically, the applicant states that the site straddles the border between (i) SoHo, (ii) Hudson Square and (iii) Tribeca and is located at the intersection of Avenue of the Americas, Canal Street and Thompson Street in Manhattan; and

WHEREAS, the applicant states that the immediate area is predominantly residential and commercial uses with some remaining manufacturing/industrial uses; and

WHEREAS, the applicant concludes that the development of the proposed building, with its mix of residential units with ground floor retail and community facility use would reinforce the mixed-use character of the surrounding neighborhood; and

WHEREAS, the applicant notes that this combination of uses would be similar to the residential and retail character

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that currently exists along Grand Street; in addition, the SoHo area contains many non-conforming residential buildings that pre-date the M1-5B zoning; and

WHEREAS, the applicant observes that the Hudson Square neighborhood, located to the west of the site, across the Avenue of the Americas, is a mixed-use area characterized by commercial and office uses, industrial uses, and an increasing number of residential uses; and

WHEREAS, the applicant further observes that the nearby Tribeca Mixed Use District, which begins on the block just south of the Property, acknowledge the mixed residential/industrial character of these neighborhood; and

WHEREAS, the applicant concludes that the proposed building, located at a highly visible location at the intersection of Avenue of the Americas, Grand, Canal and Thompson Streets, will contribute to the vitality of this area and the value of neighboring properties; and

WHEREAS, the applicant also concludes that the proposed residential and retail uses are consistent with the mixed-use character of the area, which includes many other residential uses, some of which occupy the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the character of the area is mixed-use, and finds that neither the introduction of 23 dwelling units nor the introduction of ground floor retail in this area will impact nearby conforming uses nor negatively change the area's character; and

WHEREAS, as to the height and massing, the applicant states that the proposed building would be similar in height to existing loft-style office buildings in the neighborhood; and

WHEREAS, the applicant observes that the building would be shorter than the nearby 17-story SoHo Grand Hotel on the block to the east, the 16-story loft-style office building at 100 Avenue of the Americas on the block to the north, and the 22-story office tower on the west side of Avenue of the Americas between Watts and Grand Streets; in addition, the building would be significantly shorter than the 22-story tower that is planned for construction on the block to the west of the site; and

WHEREAS, the Board also observes that the site is located primarily on the Avenue of the Americas, which is a 100 ft. wide, major north/south corridor, along which there are several large commercial buildings of between 16 and 22 stories, which are higher than the proposed 116' high building; and

WHEREAS, the Board further observes that the west side of the Avenue of the Americas near the premises is zoned M1-6, which allows 10.0 FAR development with no height limit; and

WHEREAS, in response to the Board's concerns about the impact of additional floor area above the 5.0 FAR that the subject district allows for a conforming use, the applicant represented that the proposed building has an FAR that is less than the adjacent 7.0 FAR building, and that is in the midrange

of FARs of other buildings in the surrounding blocks; and

WHEREAS, the applicant notes that the proposed building complies with all of the bulk controls applicable in an R7X zoning district aside from FAR and lot coverage, and fits within the bulk envelope and FAR permitted in a C6-2A zoning district in Hudson Square (the district chosen by the Department of City Planning as the basis for residential rezonings of 5.0 FAR manufacturing zones); and

WHEREAS, the applicant concludes that the building's height and massing provide an appropriate transition between the lower scale of development in SoHo to the east of the site, and the high density development along Avenue of Americans and in Hudson Square to the west; and

WHEREAS, in support of these statements, the applicant has submitted maps illustrating the heights and FARs of surrounding buildings; and

WHEREAS, based upon its review of these maps and its inspection, the Board agrees that the proposed building's height and FAR are consistent with other buildings in the neighborhood; and

WHEREAS, the Board also observes that unlike other sites in the SoHo area along narrow streets in historic districts, the additional FAR above 5.0 is consistent with the surrounding context; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, in addition to the analyses of the conforming scenarios, the applicant also submitted analyses of the following lesser variance scenarios: (1) a hotel scenario, with increased height and density, and an FAR of 6.5; and (2) a six-story residential building, with 20 dwelling units, and an FAR of 5.0; and

WHEREAS, the applicant concluded that neither of these scenarios would realize a reasonable return, due to the significant premium construction costs and the extended construction period; and

WHEREAS, the applicant also provided the Board with analyses of the originally proposed 6.5 FAR residential building, as well as the proposed 5.89 FAR residential building, subsequent to the Board's request to reduce the bulk of the proposed building; and

WHEREAS, the applicant states, and the Board agrees, that the return associated with the 5.89 FAR building represents a reasonable return and the minimum variance; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

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WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05-BSA-133M, dated May 25, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-5B zoning district, an eight-story, 116 ft. tall building with retail space on the ground floor and 23 residential units on the upper floors, which is contrary to ZR §§ 42-10 and 42-14(D), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 3, 2006"-(17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: eight stories, 23 residential units, a maximum of 116 ft. in total height (without bulkheads), a maximum of 150 ft. in total height (with bulkheads), an 80 ft. street wall, a total FAR of 5.89, a residential FAR of 5.3, and a retail FAR of 0.59;

THAT rooftop obstructions shall be permitted only as per the notes on the BSA-approved plans; however, modification of the rooftop obstructions within these parameters shall not require further Board review;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 4, 2006.

136-05-BZ

APPLICANT – Gerald J. Caliendo, R.A., A.I.A., for Irving Avenue Holding, LLC, owner.

SUBJECT – Application June 3, 2005 – Under Z.R. §72-21 to construct a two family, two story dwelling which does not comply with the front yard requirement pursuant to Z.R. §23-45 and is less than the required lot width/lot area pursuant to Z.R. §23-32. The premise is located in an R4 zoning district. PREMISES AFFECTED – 1901 Nereid Avenue, corner formed by intersection of the east side of Ely Avenue and North side of Nereid Avenue, Block 5092, Lot 10, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Deputy Borough Commissioner, dated March 8, 2006, acting on Department of Buildings Application No. 200918784, reads in pertinent part:

“1. Proposed front yard is contrary to Z.R. 23-45.”;
and

WHEREAS, this is an application under Z.R. §72-21, to permit, within an R4 zoning district, the proposed construction of a two-story, two-family home with only one required front yard, contrary to Z.R. § 23-45; and

WHEREAS, a public hearing was held on this application on February 7, 2006 after due notice by publication in *The City Record*, and laid over to March 14, 2006 and then to decision on April 4, 2006; and

WHEREAS, Community Board 12, Bronx, recommends disapproval of this application based on concerns about blockage of the next door neighbor’s windows, parking impacts, as well as concern that a two-family residence is not in character with the block; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the site is located at the northeast corner of Ely Avenue and Nereid Avenue; and

WHEREAS, the site is 23.75 ft. in width, with a total lot area of 2,137.5 sq. ft.; and

WHEREAS, the site is currently vacant and the applicant states that the lot has existed in its present configuration as a vacant lot prior to 1961; and

WHEREAS, the applicant proposes to construct a two-

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story, two-family home, with two parking spaces located at the rear; and

WHEREAS, the proposed home will have a total residential floor area of 1,921.86 sq. ft. (1,923.75 sq. ft. is the maximum permitted); a total residential FAR of 0.75 (0.75 is the maximum permitted); one front yard of 12.5 ft. in depth (two 10 ft. front yards are required for a corner lot in an R4 zoning district); and side yards of 5 ft. and 26 ft. 5 inches (two side yards of 5 ft. are the minimum required); and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is a pre-existing 23.75 ft. wide vacant corner lot that can not accommodate as of right development; and

WHEREAS, as to uniqueness, the applicant notes that while there are several lots within a 400 ft. radius with similar narrow widths, all are developed with homes, and that this is one of only two vacant sites within the radius; and

WHEREAS, the applicant represents that the requested front yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, the Board observes that if the applicant were to provide the second front yard of 10 ft. in width, in conjunction with the required side yard of five ft. for a corner lot, the result would be a home of 8.75 ft. in width; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, in response to the next door neighbor's testimony about the impact on light and air, the Board notes that the proposed plan provides for a complying side yard of 5 ft.; and

WHEREAS, the Board further notes the result of the waiver is that the building is aligned along the property line along Ely Street; and

WHEREAS, while the remaining portion of Ely Street has buildings that have front yards, given that the proposal is at the intersection, the impact of the waiver would not change the essential character of the neighborhood; and

WHEREAS, the Board observes that, a complying front yard is provided, along Nereid Avenue, that would be consistent with the character of the street; and

WHEREAS, in response to the Community Board concerns that a two-family home is out-of-character with the area, the applicant provided the Board with a land use map identifying two-family homes within a 400 ft. radius of the site; and

WHEREAS, the Board has reviewed this map and agrees that a significant number of homes within a 400 ft. radius, and

more than half of the homes on Nereid Avenue, are two-family homes; and

WHEREAS, in response to the concerns raised regarding parking, the Board notes that the proposal would accommodate two parking spaces on the site, as per the zoning requirement; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, during the course of the hearings, the applicant was asked to examine two lesser variance proposals, both of which provided a front yard of 3 ft. along Ely Street; and

WHEREAS, the two proposals were: (1) a single-family home and (2) a two-family home; and

WHEREAS, for both alternatives, the applicant showed that the narrower building compromised the size of the bedrooms and that the two-family proposal made the development economically feasible; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under Z.R. §72-21, to permit, within an R4 zoning district, the proposed construction of a two-story, two-family home with only one required front yard, contrary to Z.R. §23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 29, 2005"– (4) sheets and "March 21, 2006"–(1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.75; a floor area of 1,921.86 sq. ft.; one side yard of 5'-0"; one side yard of 26'-5"; and one front yard of 12'-6";

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 4, 2006.

194-05-BZ
APPLICANT – David L. Businelli, for Steven Morris, owner.

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SUBJECT – Application August 16, 2005 – Under Z.R. §72-21 – Extending the term of variance which expired on November 6, 1997 to permit in an R3-X the continued use of a one story building for retail sales with accessory parking. (Jurisdictional §72-21).

PREMISES AFFECTED – 5525 Amboy Road, North side 442.44’ West of Huguenot Avenue, Block 6815, Lot 85, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: David Businelli.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 11, 2005, acting on DOB Application No. 500621348 reads, in pertinent part:

“As per section 22-00, use group 6 is not permitted as-of-right.”; and

WHEREAS, this is an application under Z.R. §72-21, to permit, in an R3-X zoning district, the use of office space (UG 6) in place of the previously granted retail use (UG 6), contrary to Z.R. §22-00; and

WHEREAS, the term for the original variance, granted under BSA Cal. No. 384-81-BZ, permitting the development of the building for retail use expired on November 9, 1997, and this application is to re-establish the grant and change the type of Use Group 6 use; and

WHEREAS, a public hearing was held on this application on March 14, 2006, after due notice by publication in *The City Record*, and then to decision on April 4, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application on the condition that hours of operation cease at 11 P.M.; and

WHEREAS, the subject zoning lot is located on the north side of Amboy Road, west of Huguenot Avenue, and has a lot area of 35,123 sq. ft.; and

WHEREAS, the site is occupied by a one-story building with 5,000 sq. ft. of floor area and 17 unenclosed parking spaces; and

WHEREAS, the applicant represents that the proposed office use will occupy the entire building; and

WHEREAS, the site is located at the intersection of Amboy Road and the Staten Island Rapid Transit Operating Authority (SIRTOA) railroad tracks; and

WHEREAS, the applicant represents that the site is irregularly shaped, and abuts the SIRTOA tracks; and

WHEREAS, further, the applicant represents that there is a 9,976 sq. ft. street widening easement running through 80 percent of the site’s frontage and that the rear 30 ft. wide portion

of the site must remain vacant and undeveloped per SIRTOA requirements; and

WHEREAS, the applicant states, and the Board’s prior resolution indicates, that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the lot is irregularly-shaped; (2) it abuts the SIRTOA railroad tracks; (3) the land has an unusual contour and an approximate 20 ft. grade differential; (4) there is an adopted street widening on Amboy Road that requires a buffer of 35 ft. on average; and (5) the requirements of the Department of Health preclude residential development of more than four dwelling units; and

WHEREAS, the applicant represents that because of the site’s location at the intersection with the railroad, it is difficult to attract retail customers; and

WHEREAS, in addition, the applicant represents that noise emanating from the surrounding train lines discourages conforming residential use; and

WHEREAS, the Board finds that, when considered in the aggregate, the factors stated above create unnecessary hardship and practical difficulties in strictly conforming with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the Board also agrees that the site’s proximity to the railroad tracks impacts the viability of the existing Board-approved retail use; and

WHEREAS, the applicant submitted a feasibility study that analyzed the following scenarios: maintaining the existing commercial use; an as-of-right residential use; and the proposed use; and

WHEREAS, the feasibility analysis concludes that the as-of-right residential use and the existing use will not garner a reasonable rate of return; and

WHEREAS, therefore, the Board has determined that because of the subject lot’s unique physical conditions there is no reasonable possibility that an as-of-right use or continuing the existing retail use would provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance renewal will not affect the character of the neighborhood, and that the proposed use is compatible with adjacent and nearby uses; and

WHEREAS, the applicant represents that the immediate area consists almost entirely of commercial and community facility uses; and

WHEREAS, the applicant also submitted a land use map that reflects that the site is bordered by a vacant lot and the SIRTOA railroad tracks, and that there are no residential uses adjacent to it; and

WHEREAS, the applicant notes that the 17 off-street parking spaces accommodate the parking requirement for Use Group 6 office use in an equivalent commercial district; and

WHEREAS, the Board notes that the proposed hours of operation of 9 A.M. to 6 P.M., Monday through Saturday, satisfies the Community Board’s concern; and

WHEREAS, the Board also notes that the change to office use from retail would likely reduce the activity and

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traffic at the site, with minimal use on weekends; and

WHEREAS, therefore, the Board finds that the proposed application will not alter the essential character of the surrounding neighborhood, impair the use or development of adjacent properties nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, based upon the above, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA053R, dated March 8, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.4, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under Z.R. §72-21, to permit, in an R3-X zoning district, the use of office space (UG 6) in place of the previously granted retail use (UG 6), contrary to Z.R. §22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 3, 2006"-(1) sheet; and *on further condition*:

THAT the hours of operation shall be from 9 A.M. to 6 P.M., Monday through Saturday;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 4, 2006.

146-04-BZ

APPLICANT – Joseph Margolis for Jon Wong, Owner.

SUBJECT – Application April 5, 2006 – Pursuant to Z.R. §72-21 – to allow the residential conversion of an existing manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for continued hearing.

274-04-BZ

APPLICANT – Harold Weinberg, P.E., for Dr. Elena Starosta, owner.

SUBJECT – Application August 6, 2004 – Under Z.R. §72-21 Variance under Section 72-21, in an R4 district and on a lot consists of 2,470 SF, permission sought to legalize the extension of a medical use to the second floor on an existing building consisting of two-stories. The use is contrary to side yard requirements.

PREMISES AFFECTED – 2114 Gravesend Neck Road, south side, 63'-7½" south of East 22nd Street, Block 7381, Lot 101, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

320-04-BZ

APPLICANT – Harold Weinberg, P.E., for Michael Reznikov, owner.

SUBJECT – Application September 20, 2004 – Proposed legalization of a Special Permit Z.R. §73-622 for a two-story and rear enlargement, to an existing one family dwelling, Use Group 1, located in an R3-1 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, open space and rear yard, is contrary to Z.R. §23-

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141, §23-47 and §54-31.

PREMISES AFFECTED – 229 Coleridge Street, east side, 220'-0" south of Oriental Boulevard, Block 8741, Lot 72, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

5-05-BZ

APPLICANT – Sheldon Lobel, P.C., for S & J Real Estate, LLC, owner.

SUBJECT – Application January 14, 2005 – Under Z.R. 73-53 – to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,499.2 square feet.

PREMISES AFFECTED – 59-25 Fresh Meadow Lane, east side, between Horace Harding Expressway and 59th Avenue, Block 6887, Lot 24, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Irving Minkin.

For Opposition: Mary Halikiopoulous.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

47-05-BZ

APPLICANT – Fischbein Badillo Wagner Harding, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 – Under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

100-05-BZ

APPLICANT – Martyn & Don Weston, for 223 Water Street, LLC, owner.

SUBJECT – Application April 25, 2005 – Under Z.R. §72-21 to permit the proposed conversion of the second and third floors, of a six story manufacturing building, to residential use, Use Group 2, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 223 Water Street, a/k/a 48 Bridge Street, northwest corner, Block 31, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston, Jack Guttman and Jack Freeman.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

289-05-BZ

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, owner.

SUBJECT – Application September 19, 2005 – Under Z.R. §73-50 – to waive Z.R. §33-292 – waiving the require 30 foot open area at the rear of premises.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly and Clarendon Roads, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for decision, hearing closed.

339-05-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, Inc., owner.

SUBJECT – Application November 25, 2005 – Under Z.R. §72-21 – To permit the proposed construction of a Yeshiva and is contrary to Z.R. Sections 33-121 (floor area) and 33-441 (front setbacks).

PREMISES AFFECTED – 3574 Nostrand Avenue, south side of Nostrand Avenue, north of Avenue W, Block 7386, Lot 131, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Rabbi Devtsch and Russ.

For Opposition: Howard B. Weber, Mark Schilps and Arlene Reiman.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

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340-05-BZ

APPLICANT – The Law office of Fredrick A. Becker, for Chelsea Eighth L.P., owner; TSI West 16th Street dba New York Sports Club, lessee.

SUBJECT – Application November 29, 2005 – Variance under Z.R. §72-21. In C1-6A, C6-2A, R8B districts, permission sought to legalize a physical culture establishment (PCE), located in the portions of the cellar and first floor of an existing 22-story mixed-use building. The proposed use is contrary to district use regulations.

PREMISES AFFECTED – 270 West 17th Street, a/k/a 124-128 Eighth Avenue, easterly sided of Eighth Avenue between 17th Street and West 16th Streets, Block 766, Lots 1101, 1102, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for decision, hearing closed.

349-05-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Church of the Resurrection, owner.

SUBJECT – Application December 8, 2005 – Zoning Variance (bulk) pursuant to Z.R. §72-21 – to allow a proposed eight (8) story residential building with community facility use on the 1st and 2nd floors in an R7A Zoning District; contrary to Z.R. §23-145.

PREMISES AFFECTED – 325 East 101st Street, between First and Second Avenues, Block 1673, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: 5:00 P.M.

BULLETIN

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April 20, 2006

DIRECTORY

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SATISH BABBAR, *Vice-Chair*

JAMES CHIN

CHRISTOPHER COLLINS

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Tuesday, April 11, 2006**

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DOCKETS

New Case Filed Up to April 11, 2006

60-06-A

1824 53rd Street, South side of the street 127.95 feet east of the intersection of 53rd Street and 18th Avenue., Block 5480, Lot 14, Borough of **Brooklyn, Community Board: 12**. Appeal-Proposed catering use (UG9), is not an accessory use to the synagogue and school (UG 4 & 3) in an R5 zone.

160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of **Manhattan, Community Board: 8**. Appeal-Seeking to revoke permits and approvals which allows an enlargement to an existing dwelling, which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.

61-06-A

152 Ocean Avenue, Westerly side of Ocean Avenue, 0' from Oceanside Avenue., Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 35, Article 3-Proposed to rebuild and enlarge the existing first floor and add a new second floor on a home, which lies within the bed of a mapped street.

64-06-BZ

363-371 Lafayette Street, Lafayette between Great Jones and Bond Streets, Block 530, Lot 17, Borough of **Manhattan, Community Board: 2**. Under 72-21- To allow a seven (7) story multi-family residential building with ground floor retail contains fourteen (14) dwelling units.

62-06-BZ

657 Logan Avenue, West side of Logan Avenue 100 feet south of Randall Avenue., Block 5436, Lot 48, Borough of **Bronx, Community Board: 10**. Under 72-21-To allow the addition of a second floor and attic to an existing one story, one family dwelling. The enlargement will increase the degree of non-compliance for the rear yard and side yards and exceed the permitted floor area.

65-06-BZ

72-45 43 Avenue, Corner of 43 Avenue and 74th Street., Block 1353, Lot 46, Borough of **Queens, Community Board: 4**. Under 72-21- proposed 3 Family building in an R5 zoning district which violates front and side yard requirements.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

63-06-A

CALENDAR

MAY 9, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 9, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

32-38-BZ

APPLICANT – Steven M. Sinacori, Esq., for 88 Third Avenue Associates, owner.

SUBJECT – Application March 21, 2006 – Reopening for an amendment to the resolution to eliminate the twenty year (20) term for the change in occupancy from Manufacturing (UG17) to Office (UG6) in a four story and cellar building located in an R-6 zoning district, as adopted by the Board of Standards and Appeals on March 16, 1993.

PREMISES AFFECTED – 88 Third Avenue, west side of Third Avenue, between Bergen and Dean Streets, Block 197, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #2BK

26-94-BZ

APPLICANT – Rampulla Associates Architects, for CDC Realty, LLC, owner.

SUBJECT – Application March 24, 2006 – Reopening for an Extension of Term for a Special Permit renewal for an eating and drinking establishment (UG6, located in a C3A zoning district.

PREMISES AFFECTED – 141 Mansion Avenue, intersection of Mansion Avenue and McKeon Avenue, Block 5201, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEALS CALENDAR

206-05-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Joanne & Thomas DeRosa, lessee.

SUBJECT – Application September 6, 2005 – Proposed construction of an existing single family frame dwelling situated in the bed of a mapped street contrary to General City Law Article 3, Section 35 and upgrading an existing private disposal system which is contrary to Department of Buildings policy. Premises is located within an R4 zoning

district.

PREMISES AFFECTED – 9 Bayside Drive, in the bed of Bayside Drive 109.72 northwest of Rockaway Point Boulevard, Block 16340, part of Lot 50, Borough of Queens.

COMMUNITY BOARD#14Q

294-05-A thru 296-05-A

APPLICANT – Rothkrug RothkrugWeinberg & Spector, LLP for Pleasant Place, LLC, owner.

SUBJECT – Application September 29, 2005 – Proposed construction of three two- family homes not fronting on a mapped street is contrary to GCL 36, Article 3. Current R3-2 Zoning District.

PREMISES AFFECTED – 146-34, 36, 38 Pleasant Place, Queens, West side of Pleasant Place, 100ft north of intersection with 146th Drive, Block 13351, Tentative Lot #s 100, 101, 103, Borough of Queens

COMMUNITY BOARD #13Q

372-05-BZY/373-05-BZY

APPLICANT – Adam Rothkrug, for Woodrow Estates North LLC, owner.

SUBJECT – Application December 27, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R4 Zoning District. Current R3-A (HS) Zoning District.

PREMISES AFFECTED – 28 Webster Avenue (aka 101 Stanley Avenue) Block 111, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

MAY 9, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 9, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following

CALENDAR

matters:

SPECIAL ORDER CALENDAR

ZONING CALENDAR

151-05-BZ

APPLICANT – The Law Office of Frederick A. Becker for 100 Varick Street, LLC, Owner.

SUBJECT – Application June 16, 2005 – Zoning Variance (use) pursuant to ZR §72-21 to allow a proposed ten (10) story residential building containing seventy-nine (79) dwelling units located in an M1-6 district; contrary to ZR § 42-00.

PREMISES AFFECTED – 100 Varick Street, located on the easterly side of Varick Street between Watts and Broome Streets, Block 477, Lots 35 & 42, Borough of Manhattan
COMMUNITY BOARD #2M

15-06-BZ

APPLICANT – Eric Palatnik, PC for the Yeshiva Tifereth Moshe, Owner.

SUBJECT – Application January 26, 2006 – Zoning Variance (bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the construction of a new yeshiva located in an R4 zoning district. The proposed variance would allow modifications of zoning requirements for lot coverage, side yards, rear yard and height and setback; contrary to Z.R. §§ 24-11, 24-35, 24-36, 24-521 and 24-551.

PREMISES AFFECTED – 147-22 73rd Avenue located on the south side of 73rd Avenue between 147th and 150th streets (Block 6682, Lots 11 & 13), Borough of Queens
COMMUNITY BOARD #8Q

Jeff Mulligan, Executive Director

MAY 16, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 16, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

499-29-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum, owner; BP Products, lessee.

SUBJECT – Application March 3, 2006 - Application for the Extension of Term of an Automotive Service Station with an accessory automotive repair establishment located in a C1-2/R3-2 zoning district. The term expired on March 23, 2006. The application is seeking a 10 year extension.

PREMISES AFFECTED – 248-70 Horace Harding Expressway, southwest corner of Marathon Parkway, Block 8276, Lot 660, Borough of Queens.

COMMUNITY BOARD #11Q

565-57-BZ

APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 5832 Broadway (5848 Broadway or 196-198 West 239th Street) southeast corner of Broadway and 239th Street, Block 3271, Lot 198, Borough of The Bronx.

COMMUNITY BOARD #8BX

364-04-BZ

APPLICANT – Sheldon Lobel, for New Lots Avenue, LLC, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 690-702 New Lots Avenue, south side of New Lots Avenue between Jerome Street and Warwick Street, Block 4310, Lots 5, 7, 8 & 10, Borough of Brooklyn

COMMUNITY BOARD #5BK

370-03-BZ

APPLICANT – Fischbein Badillo Wagner Harding for Metroeb Realty Corp., owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 143-153 Roebling Street, aka 17-19 Hope Street, east side of Roebling between Hope Street and Metropolitan Avenue, Block 2368, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

CALENDAR

379-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED –107 Debevoise Avenue (aka 20Division Place), southwest corner of Debevoise Avenue and Division Place, Block 2849, Lot 15, Brooklyn.

COMMUNITY BOARD #1BK

328-04-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application October 5, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a six story residential building, with twelve dwelling units, Use Group 2, located in an M1-1 zoning district, does not comply with zoning requirements for use, bulk and parking provisions, is contrary to Z.R. §42-00, §43-00 and §44-00.

PREMISES AFFECTED – 110 Franklin Avenue, between Park and Myrtle Avenues, Block 1898, Lots 49 & 50, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEALS CALENDAR

53-06-A

APPLICANT – Valentino Pompeo for Breezy Point Co-op Inc., owner, Karen Lindsay, lessee

SUBJECT – Application filed March 22, 2006 – Proposed reconstruction and enlargement of a single family dwelling not fronting on a mapped street contrary to GCL § 36 , Article 3

PREMISES AFFECTED – 104 Beach 215th Street, south of Beach 215th Street east of Breezy Point Blvd., Block 11635, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

334-04-BZ

APPLICANT – Sheldon Lobel, P.C., for L & L Realty, owner. Great Roosevelt Plaza Corporation, lessee.

SUBJECT – Application October 8, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a seven-story mixed-use building containing retail, general office and community facility space. No parking will be provided. The site is currently occupied by two commercial buildings which will be demolished as part loading of the proposed action. The site is located is located in a C4-2 zoning district. The proposal is contrary to Z.R. §36-21 (Required parking), §36-62 (Required loading berth), and §33-432(Sky exposure plane and setback requirements).

PREMISES AFFECTED – 135-28 Roosevelt Avenue, Roosevelt Avenue between Prince Street and Main Street. Block 5036, Lots 26(fka 25/26), Borough of Queens.

COMMUNITY BOARD #7Q

205-05-A

APPLICANT – Zygmunt Staszewski, P.E. for Sheila Cardinale, lessee; Breezy Point Cooperative, Inc. owner .

SUBJECT – Application August 30, 2005 - Proposed enlargement of an existing one family dwelling, not fronting on a mapped street, is contrary to GCL §36, Article 3 and is also located partially within the bed of the mapped street including the upgrade of the existing private disposal system is contrary to GCL §35.

PREMISES AFFECTED – 47 Graham Place, north side of Graham Place, 52.20 West of beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD # 14Q

165-05-BZ

APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.

SUBJECT – Application July 25, 2005 - Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.

PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156’-3” East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn

COMMUNITY BOARD #8BK

MAY 16, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 16, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

352-05-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Peter Procops, owner; McDonald’s Corporation, owner.

SUBJECT – Application December 14, 2005 - Z.R. §73-243 proposed re-establishment of an expired special permit for

CALENDAR

an eating and drinking establishment with an accessory drive-through, located in a C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection at Beach Channel Drive, Block 15709, Lot(s) 101, Borough of Queens

COMMUNITY BOARD #14Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 11, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, February 7, 2006, were approved as printed in the Bulletin of February 16, 2006, Volume 91, No.7.

SPECIAL ORDER CALENDAR

410-68-BZ

APPLICANT – Sheldon Lobel, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application January 21, 2006 – Extension of time to complete construction and to obtain a certificate of occupancy pursuant to Z.R. §11-412.

PREMISES AFFECTED – 85-05 Astoria Boulevard, Block 1097, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, this is an application, for an extension of time to complete construction and obtain a new certificate of occupancy, related to the previously granted variance which permitted the conversion of a portion of an existing automotive service station to a convenience store, the construction of a new building to contain two automotive service repair bays, service attendant area and customer waiting area, an extension of the existing canopy, the relocation of the pump islands, and the addition of one new fuel dispenser; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, and then to decision on April 11, 2006; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since February 24, 1954, under BSA Calendar No. 676-53-BZ, when the Board granted an application to permit the erection and maintenance of a gasoline service station, with an auto wash, lubricatorium, and motor vehicle repairs; and

WHEREAS, most recently, on January 11, 2005, the Board granted an application to amend the variance to permit the conversion of the existing 1,868 sq. ft., three-bay automotive

service station to a one-bay service station, with an office, utility room, and convenience store, and to permit a new 934 sq. ft. addition to the building; and

WHEREAS, a condition of the most recent amendment was that a new Certificate of Occupancy be obtained by January 11, 2006; and

WHEREAS, however the applicant represents that 50 percent of construction has been completed; and

WHEREAS, at hearing, the Board asked the applicant how much time was needed to complete the construction and obtain the certificate of occupancy; and

WHEREAS, the applicant represents that construction could be completed in 7-9 months and that a certificate of occupancy could be obtained in 18 months; and

WHEREAS, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on November 26, 1968, under the subject calendar number, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of two years from the prior grant’s expiration, to expire on January 11, 2008, *on condition*:

THAT a new certificate of occupancy shall be obtained by January 11, 2008;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT a new certificate of occupancy be obtained by the grant expiration date;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB No. 401856997).

Adopted by the Board of Standards and Appeals, April 11, 2006.

1038-80-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corp, lessee.

SUBJECT – Application December 1, 2005 – Extension of Term of a Special Permit for an amusement arcade (UG15) in an M2-1 zoning district which expired on January 6, 2006.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of

MINUTES

Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Patricia Prothro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term of the special permit, which expired on January 6, 2006; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, and then to April 11, 2006 for decision; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, on January 6, 1981, the Board granted a special permit for the operation of an amusement arcade on the subject premises; and

WHEREAS, on May 13, 1986, the special permit was amended to increase the number of amusement arcade games from 112 to 130; and

WHEREAS, the Board finds that the instant application is appropriate to grant, based upon the evidence submitted.

Therefore it is Resolved that the Board of Standards and Appeals, *reopens and amends* the resolution, said resolution having been adopted on January 6, 1981 as amended May 13, 1986, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the special permit for an additional one (1) year from January 6, 2006 expiring on January 6, 2007; *on condition* that all conditions and drawings associated with the previous grant remain in effect; and *on further condition*:

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be no more than 130 amusement games on the subject premises;

THAT the above conditions and all conditions from prior resolutions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Alt. No. 435/81)

Adopted by the Board of Standards and Appeals, April 11, 2006.

263-98-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Joseph Elegudin, owner.

SUBJECT – Application November 18, 2005 – Extension of time to complete construction pursuant to Special Permit Z.R. §73-622 for an enlargement of a single family home which expired on September 9, 2005; and for an amendment to the previously approved plans to add an elevator to the residence.

The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 118 Oxford Street, 115’ south of intersection with Shore Boulevard, Block 8757, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a re-opening for an amendment and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on March 14, 2006, after due notice by publication in *The City Record*, and then to decision on April 11, 2006; and

WHEREAS, the subject site is located on the west side of Oxford Street, south of Shore Boulevard, and is within an R3-1 zoning district; and

WHEREAS, on April 27, 1999, the Board granted an application under the subject calendar number to permit the enlargement of a single-family home; and

WHEREAS, on April 3, 2003, under the subject calendar number, the Board granted an extension of time to complete construction; and

WHEREAS, the resolution for the extension required that a certificate of occupancy be obtained within two years of the date of the grant; and

WHEREAS, the applicant represents that due to unforeseen construction delays and a change in personal circumstances, construction has not been completed since the grant date; and

WHEREAS, however, the applicant represents that the owner is now able to resume and complete construction; and

WHEREAS, further, the applicant represents that a family member’s severe injury now necessitates the requested minor amendment to the approved plans that provides for an elevator; and

WHEREAS, at hearing, the Board asked the applicant if the addition of the elevator would create any new non-compliance; and

WHEREAS, the applicant represents that the addition of the elevator would not create any new non-compliance; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested amendment and extension of

MINUTES

time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on April 27, 1999, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of one year from the date of this resolution, to expire on April 11, 2007; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application, marked “Received November 18, 2005”-(2) sheets and on further condition:

THAT a new certificate of occupancy shall be obtained within one year from the date of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 302058467)

Adopted by the Board of Standards and Appeals, April 11, 2006.

280-01-BZ

APPLICANT – Stadtmauer Bailkin LLP & Cozin O’Connor, for Perbinder Holdings, LLC, owner; Metropolitan Transportation Auth., lessee.

SUBJECT – Application January 23, 2006– Extension of Time to complete construction for a variance ZR§72-21 to permit a mixed use building located in a C1-9 zoning district. PREMISES AFFECTED – 663/673 Second Avenue & 241/249 East 36th Street, Block 917, Lots 21, 24/30, 32 & 34, Borough of Manhattan.

COMMUNITY BOARD #6

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening for an extension of time to complete construction; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, and then to decision on April 11, 2006; and

WHEREAS, the subject site is located the west side of Second Avenue, between East 36th Street, and East 37th Street,

and is within an C1-9 zoning district; and

WHEREAS, on May 7, 2002, the Board granted an application under the subject calendar number pursuant to ZR § 72-21, to permit the development of a mixed use building; and

WHEREAS, on September 24, 2002, the Board granted an amendment to the resolution, under the subject calendar number; and

WHEREAS, the applicant represents that due to unforeseen construction delays concerning its location and complex engineering methods, the construction has not begun since the grant date; and

WHEREAS, the applicant notes that the majority of the site is improved with a recessed roadway exit for the Queens-Midtown Tunnel; and

WHEREAS, the exit is more than 14 feet below street grade at Second Avenue and rises steadily as it travels westerly across the site; and

WHEREAS, as a result of these unique conditions at the site, an extensive truss system must be installed over the tunnel exit; and

WHEREAS, the design of the system was time-consuming, and delayed the commencement of construction; and

WHEREAS, the applicant has provided a letter from the Metropolitan Transportation Authority stating that it has no objection to an extension of time to complete construction; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on May 7, 2002, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of four years from the date of the prior grant’s expiration, to expire on May 7, 2010; on condition:

THAT a new certificate of occupancy shall be obtained by May 7, 2010;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 102973926)

Adopted by the Board of Standards and Appeals, April 11, 2006.

360-49-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum, Inc., owner.

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SUBJECT – Application November 14, 2005 – Pursuant to Z.R.§72-21 for an extension of term of the previously granted variance permitting the use of the site as a gasoline service station with accessory uses which expired on February 25, 2005. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 69-05 Eliot Avenue, northern corner of Eliot Avenue and 69th Street, Block 2838, Lot 38, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 2, 2006, at 10 A.M., for decision, hearing closed.

414-59-BZ

APPLICANT – Bryan Cave, LLP, for Royal Charter Properties, owner.

SUBJECT – Application December 8, 2005 – Extension of Term of a Variance to allow 77 transient parking spaces at the first and cellar floors of an existing multiple dwelling accessory garage. The premise is located in an R-9 and R-10 zoning district.

PREMISES AFFECTED –1285 York Avenue, aka 435-445 East 68th Street, Block 1463, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Margery Perlmutter and Martin Cohen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for decision, hearing closed.

1180-80-BZ

APPLICANT – SFS Associates, for One Tiffany Place Condominium, owner.

SUBJECT – Application September 21, 2005 – Reopening for an amendment to the resolution to include superintendents’ apartment in the cellar of the existing building.

PREMISES AFFECTED – 1 Tiffany Place, Block 320, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 2, 2006, at 10 A.M., for decision, hearing closed.

705-81-BZ

APPLICANT – Agusta & Ross, for Fraydon Enterprises, owner; New York Health & Racquet Club, lessee.

SUBJECT – Application May 23, 2005 – Application for an Extension of Term/Amendment/Waiver for a Variance Z.R. 72-21 to continue the operation of a physical culture establishment and to permit the change in hours of operation.

The premise is located in an R-10 zoning district.

PREMISES AFFECTED – 1433-37 York Avenue, northwest corner of York Avenue and East 76th Street, Block 1471, Lots 21, 22 and 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ellen Stegman, Mary Noonan and Mitchell Ross.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 2, 2006, at 10 A.M., for decision, hearing closed.

173-94-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Richard Shelala, owner; Compass Forwarding Co., Inc., lessee.

SUBJECT – Application July 25, 2005 – Reopening for an amendment of variance to permit the change in hours of operation of a freight transfer facility. The premise is located in a C2-2(R3-2) zoning district.

PREMISES AFFECTED – 159-15 Rockaway Boulevard a/k/a 165-10 144th Road, southeast corner of Rockaway Boulevard and 144th Road, Block 1327, Lot 17, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for decision, hearing closed.

132-97-BZ/24-06-A

APPLICANT – Alan R. Gaines, Esq., for Deti Land, LLC, owner; Fiore Di Mare LLC, lessee.

SUBJECT – Application June 7, 2005 and January 3, 2006 – Extension of Term/Amendment/Waiver for an eating and drinking establishment with no entertainment or dancing and

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occupancy of less than 200 patrons, UG 6 located in a C-3 (SRD) zoning district. Proposed legalization of four on-site parking spaces for an eating and drinking establishment (Fiore Di Mare) located in the bed of a mapped street, is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 227 Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island

COMMUNITY BOARD# 3SI

APPEARANCES –

For Applicant: Joseph D. Manno, Esq.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for continued hearing.

83-00-BZ

APPLICANT – Eric Palatnik, P.C., for KFC US Properties, Inc., owner.

SUBJECT – Application September 21, 2005 – Reopening for a waiver of the Rules of Practice and Procedure and for an extension of the term of special permit which expired September 26, 2003.

PREMISES AFFECTED – 87-11/21 Northern Boulevard, northern corner of 88th Street, Block 1417, Lot 36, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

370-05-BZY

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Affirmation Arts Limited, owner.

SUBJECT – Application December 22, 2005 – Proposed extension of time to complete construction pursuant to Z.R. 11-332 for a one story and mezzanine addition to an existing three-story building, previously located in a C6-2(CC) zoning district. The current zoning district is now C6-2(HY).

PREMISES AFFECTED – 523 West 37th Street, interior lot, block bounded by West 37th and West 38th Streets, Tenth and Eleventh Avenues, Block 709, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: James P. Power.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

Adopted by the Board of Standards and Appeals, April 11, 2006.

371-05-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Affirmation Arts Limited, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to complete construction pursuant to Z.R. 11-332 for a one story and mezzanine addition to an existing three-story building, previously located in a C6-2(CC) zoning district. The current zoning district is now C6-2(HY).

PREMISES AFFECTED – 523 West 37th Street, interior lot, block bounded by West 37th and West 38th Streets, Tenth and Eleventh Avenues, Block 709, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: James P. Power and Dawn Thompson.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed enlargement of a building at the referenced premises; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 370-05-BZY, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR §11-332; and

WHEREAS, because the instant application is hereby granted, the applicant withdrew this BZY application, as the extension of time to complete construction that the Board could provide under ZR § 11-332 was deemed insufficient given the amount of construction that remains; and

WHEREAS, a public hearing was held on this application on March 28, 2006 after due notice by publication in *The City Record*, and then to decision on April 11, 2006; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 4, Manhattan, did not oppose this application, though it indicated it had no objection to a three month extension; and

WHEREAS, this application is for an extension of a lawfully-issued building permit issued before the effective date of the Hudson Yards Rezoning and Redevelopment Program (the "Hudson Yards Program"), specifically the map change to Zoning Map 8d, which rezoned the premises from C6-2 (CC) to C6-2 (HY) (the "Zoning Change"), and the zoning text amendment that prohibited new developments

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and enlargements at the premises (the "Text Amendment"), to allow completion of the construction of a proposed 3,206 square foot enlargement to an existing three-story, 10,438 square foot commercial building at the site (the "Enlargement").

WHEREAS, the City Council approved the Zoning Change and the Text Amendment on January 19, 2005 (the "Effective Date"); and

WHEREAS, the applicant states that the site is a 4,955 square foot parcel consisting of a midblock portion of Block 709, which is the block bounded by West 37th Street to the south, Tenth Avenue to the east, West 38th Street to the north and Eleventh Avenue to the west; the site has 50.20 feet of frontage on West 37th Street and a depth of 98.70 feet; and

WHEREAS, the site is currently improved with a three-story commercial building previously used as a studio (the "Building"); and

WHEREAS, the applicant states that the Enlargement would be a one-story and mezzanine addition to the existing Building, and would consist of a 3,206 square foot enlargement; and

WHEREAS, the contemplated work includes: extensive demolition, the addition of a third floor mezzanine and a fourth floor and a conversion from photographic studio and accessory uses (Use Group 6) to art exhibition gallery on the first floor (Use Group 6), administrative offices accessory to the studio (Use Group 9) on the second floor, office/working craft studio/art storage (Use Group 9) on the third floor, working art studio/art storage (Use Group 9) on the mezzanine and directors office and meeting room accessory to the studio (Use Group 9) on the fourth floor; and

WHEREAS, the applicant represents that the site is located in the Phase 2 Hudson Boulevard and Park area, which is a subdistrict of the Hudson Yards Program intended to implement the later stages of the park plan; and

WHEREAS, the applicant further represents that Section 93-32 of the Special Hudson Yards District regulations entitled "Floor Area Regulations in the Phase 2 Hudson Boulevard and Park," provides that "[i]n the Phase 2 Hudson Boulevard and Park, no new development shall be permitted, and, except as provided in Section 93-051 (applicability of Chapter 1 of Article 1) no existing development shall be enlarged; ZR Section 93-051(b) provides that "Section 11-332 (Extension of period to complete construction) shall apply, except that notwithstanding the provisions of paragraph (a) of such Section, in the event that other construction for which a building permit has been lawfully issued and for which construction has been commenced but not completed on January 19, 2005, such other construction may be continued provided that the construction is completed and a temporary or permanent certificate of occupancy is obtained not later than January 19, 2006; and

WHEREAS, the applicant notes that on October 14, 2005, DOB issued a Notice of Intent to Revoke All Permits based upon information that it received that indicated that work on the Enlargement began after January 19, 2005, contrary to the Text Amendment; and

WHEREAS, the applicant further notes that on November 29, 2005, DOB Manhattan Deputy Borough Commissioner Christopher Santulli, P.E., accepted documentation that construction had commenced prior to January 19, 2005 and approved continuation of construction, provided that "in the event a [temporary or permanent certificate of occupancy] is not obtained by January 19, 2006 no work shall proceed beyond January 19, 2006 without prior approval from BSA."; and

WHEREAS, the Board observes that in addition to the rights conferred by the above-referenced ZR provisions and DOB determination, the applicant retained the right to file for the subject common law vesting determination; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, accordingly, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the Enlargement; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, the applicant has submitted into the record the following: copies of DOB Permit Nos. 103847544-01-EW.OT (Alt2-Demo) (renewal), dated August 23, 2004, authorizing demolition; 103830649-01-AL (Alt1) (renewal), dated June 9, 2005, authorizing construction of the Enlargement; 013842139-01-EW.OT (Alt2-Gen Const) (renewal), dated June 9, 2005, authorizing repair and modification of the Building's façade; 1030332-01-AL..(Alt1) (renewal), dated June 9, 2004, authorizing changes of use to obtain a new certificate of occupancy; and 104147184-01-EQ-SH (Alt3-Sidewalk shed), dated June 29, 2005, authorizing construction of a sidewalk shed; and

WHEREAS, the applicant notes that the Alt 1 construction permit (the "A1 Permit") was originally issued on November 18, 2004, and subsequently renewed; and

WHEREAS, the Board agrees that valid permits authorizing the Enlargement were issued prior to the enactment of the Rezoning or the Text Amendment; and

WHEREAS, turning to the substantive findings of the amount of work done and the amount of expenditure, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of an amendment; and

WHEREAS, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, in its written statements and testimony, the applicant represents that as of the dates of the zoning

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changes, substantial construction had been completed and substantial expenditures were made after the issuance of the A1 Permit; and

WHEREAS, more specifically, the applicant represents that: the affidavits, photographs and schedules of construction costs and the other affidavits submitted with this application, demonstrate that substantial construction, however analyzed, had been completed and that substantial expenditures had been made on the Enlargement as of January 19, 2006; and

WHEREAS, as to actual work completed, the applicant states that, as set forth in the affidavit of Michael J. Strauss, President of Vanguard Construction & Development Co. Inc. ("VCD"), the construction manager for the Enlargement, as of December 16, 2005, the following work had been completed: selective demolition; cutting and excavation of the pit foundation for the new art elevator; new steel wind bracing and columns, inclusive of footings and slab on grade; masonry shaft construction and masonry wall extensions; reinforcement of existing vertical and horizontal columns and beams; erection of structural steel and installation of the Q-decking; installation of the underground plumbing and 70% of the above ground plumbing roughing; installation of air conditioning units, and completion of 60% of the ductwork distribution and insulation; and completion of 50% of the electrical distribution, 90% of the rough carpentry, 45% of the framing of partitions and 25% of the curtain wall; and

WHEREAS, the applicant states that the work completed through January 19, 2006 represents approximately 79 percent of the total working days, including pre-construction working days, and approximately 71 percent of the working days under the DOB Permits; and

WHEREAS, the applicant represents that the following elements of the Enlargement remain to be constructed: installation of building skin, and skylights, installation or finish light fixtures, diffusers, doors and hardware, complete roofing and window system, all finish flooring systems, installation of stairs, installation of millwork, and installation and finishing of carpentry and ceilings; and

WHEREAS, the applicant concludes that the amount and type of construction on the Enlargement clearly satisfies the standards for substantial construction under the case law of New York State, in that there has been tangible physical change to the site, the existing Building has been gutted and exposed to the elements, and the completed elements are an integral part of the alteration; and

WHEREAS, as to costs, the Board first observes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are included in the applicant's analysis; and

WHEREAS, the applicant states that the affidavits and schedules of construction costs, and the other affidavits submitted with this application demonstrate that, on a cost basis, substantial construction had been completed and substantial expenditures made as of January 19, 2006; and

WHEREAS the applicant notes that a total of

\$6,471,176, or 82 percent of the total project cost, had been spent through January 19, 2006, and the total irrevocable financial commitments as of January 19, 2005 were \$7,745,226, or approximately 98 percent of the total project cost; and

WHEREAS, more specifically, the applicant states that work under the VCD contract for the Enlargement is currently estimated to cost \$6,665,163; as of January 19, 2006, \$5,249,552, or approximately 79 percent of the total project cost, had been completed or purchased and stored either on or off-site; and

WHEREAS, the applicant further states that through February 16, 2005, VCD had submitted Applications and Certificates for Payment to the Owner for amounts totalling \$4,974,600.60, and through February 24, 2006, VCD had received payment from the Owner in the amount of \$4,724,596.80; and

WHEREAS, the applicant contends that if work on the Enlargement could not be continued, the developer would be obligated to pay the subcontractors and VCD cancellation fees constituting between 90 to 95 percent of the unfinished amount of the unfinished trade contracts and other work under the VCD Contract, or at least \$1,274,050; and

WHEREAS, the applicant has submitted an affidavit establishing that the total amount of hard costs for the Enlargement incurred is estimated to be \$370,387, of which \$84,435, representing 23 percent, had been incurred as of January 19, 2006; the entire \$84,435 was incurred after the DOB Permits were issued; and

WHEREAS, the applicant states that the total soft costs for the Enlargement will be approximately \$1,320,521, of which approximately \$1,137,189, or approximately 86 percent were incurred as of January 19, 2006; approximately \$733,006 of this amount was incurred after the DOB Permits were issued; and

WHEREAS, the applicant summarizes as follows: the total project cost is \$7,935,072, including costs to be incurred by VCD (\$6,244,164), hard costs to be directly incurred by developer (\$370,387), and soft costs to be incurred (\$1,320,521); of this amount, a total of \$6,471,176, or 82 percent, was spent through January 19, 2006; and

WHEREAS, subsequent to the first hearing, the applicant submitted additional evidence to the Board at its request, in support of the common law vesting claim; and

WHEREAS, specifically, the Board asked for clarification as to the following issues: (1) the amount of work and expenditure related to creation of new floor area; and (2) whether any work was performed during the period when the job was "on hold", as indicated by DOB computer records; and

WHEREAS, the applicant provided an analysis that illustrated the new floor area accounts for a very high percentage of the structural work in the Enlargement because the new floor area requires substantial steel reinforcement and bracing of the exterior wall, as well as structural carpentry shear wall on the lower floors in order to support the new construction; and

WHEREAS, as to expenditure, the applicant stated that

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the new floor area in the Enlargement would account for a percentage of the project cost approximately corresponding to the percentage of the floor area in the building that it constitutes, or 23.5%; thus, the new floor area accounts for approximately \$2,421,909, or 36% of the total project cost under the VCD contract, and, of that amount, approximately \$2,070,858, or 86%, was completed or stored as of January 19, 2006; and

WHEREAS, the applicant states that, with respect to the soft costs and the hard costs to be directly incurred by the owner, the new floor area in the Enlargement would account for a percentage of the cost of the Enlargement approximately corresponding to the percentage of the floor area in the building that it constitutes, or 23.5%; thus, the new floor area accounts for approximately \$310,322 in soft costs, of which approximately 86 percent or \$266,877, were incurred as of January 19, 2006, and approximately \$87,041 in hard costs to be directly incurred by the owner, of which approximately 23 percent, or \$20,019, were incurred as of January 19, 2006; and

WHEREAS, the Board notes that the work related to the construction of the new floor area and the remainder of the interior work within the Building are, as the applicant noted, integrally related, but asked for this analysis as further evidence that vesting had been achieved; and

WHEREAS, as to the "on hold" status of the job, the applicant responded that this status does not prevent work from continuing under the issued permits; rather, it prevents new permits from being issued; and

WHEREAS, in other words, no stop work order was issued; instead, the applicant was required to address some outstanding issues raised by DOB as to the issued permits before the "on hold" status was lifted; and

WHEREAS, based upon its review of the applicant's statements as noted above and the evidence submitted in support of them, the Board finds that the degree of work done and expenditures incurred is sufficient to meet the common law vesting standard; and

WHEREAS, thus, the applicant is entitled to the requested six-month extension of the A1 Permit, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Alteration Permit No. 1030332-01, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement for one term of six months from the date of this resolution, to expire on October 11, 2006.

Adopted by the Board of Standards and Appeals, April 11, 2006.

350-05-BZY

APPLICANT – Eric Palatnik, P.C., for 49 Properties, LLC, owner.

SUBJECT – Application December 08, 2005 – Proposed extension of time to complete construction of a minor

development pursuant to Z.R. 11-331 for a multi family 4 story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 245 16th Street, Brooklyn, north side between 4th and 5th Avenue, Block 1048, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Marie Ciccone.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, and then to closure and decision on April 11, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 7, Brooklyn, opposed the granting of any relief to the applicant, citing concerns that some work took place after hours or on weekends, which was not covered by the issued permit; and

WHEREAS, the Concerned Citizens of Greenwood Heights opposed the granting of any relief to the applicant, citing concerns similar to the Community Board's; and

WHEREAS, the opposition states that DOB issued a Stop Work Order related to illegal work prior to the cessation of construction due to the rezoning; and

WHEREAS, at the request of the Board, applicant made a submission that analyzed the DOB complaint history; and

WHEREAS, the Board reviewed this submission, which details the complaints and issued violations, and observes that no complaints resulted in violations and that there was no Stop Work Order issued prior to the SWO issued on November 16, 2005 (which was related to the rezoning); and

WHEREAS, specifically, DOB records indicate that there were 11 complaints made while construction was on-going, that three remain active (i.e. no inspections were made in response to them), but that no violations were issued for after-hours work;

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and

WHEREAS, the subject premises consists of one lot on the north side of 16th Street between Fourth and Fifth Avenues; and

WHEREAS, the subject premises is located within an R6B zoning district; and

WHEREAS, the subject premises is proposed to be developed with a four-story, multi-family dwelling; and

WHEREAS, however, on November 16, 2005 (hereinafter, the "Rezoning Date"), the City Council voted to enact the South Park Slope rezoning proposal, which changed the zoning district from R6 to R6B, rendering the development non-complying as to floor area, street wall height, building height, and parking; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, ZR § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of Minor Development; and

WHEREAS, the applicant represents that the relevant Department of Buildings' permit was lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that on October 7, 2005 a new building permit (Permit No. 301965112-01-NB; hereinafter, the "NB Permit") for the new building was lawfully issued to the applicant by the Department of Buildings; and

WHEREAS, the Board has reviewed the record and agrees that the NB Permit was lawfully issued to the owner of the subject premises; and

WHEREAS, the applicant represents that, as of the Rezoning Date, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, the applicant represents that excavation of the site took place from October 7th to the 16th, 2005; and

WHEREAS, applicant represents that the foundation was framed and other site work was performed during the same dates; and

WHEREAS, the applicant represents that 183.56 cubic yards of concrete were poured during the period of October 17 through November 16, 2005 (when DOB issued a SWO); and

WHEREAS, the applicant represents that as of the Rezoning Date, 100 percent of the excavation has been completed, 100 percent of footings have been installed, and 90 percent of foundation wall including reinforcement and concrete pouring have been completed; and

WHEREAS, in support of the contention that the specified amount of work has been completed and the specified amount of concrete was poured during this period, the applicant has submitted affidavits from both the project's architect and general contractor documenting the status of said completion; and

WHEREAS, the applicant has also submitted photographs of the site and a color-coded copy of the foundation plan depicting the extent of work done on the foundation; the latter is signed and sealed by a professional engineer; and

WHEREAS, in support of the contention that 183.56 cubic yards of concrete were poured by November 16, 2005, the applicant has submitted receipts from two concrete batching companies reflecting the pouring of 183.56 cubic yards of concrete, during the period of October 17 through November 9, 2005; and

WHEREAS, the applicant represents that the only remaining work on the foundation is the pouring of approximately 22.44 cubic yards of concrete; and

WHEREAS, the affidavit from the project architect, noted above, asserts that approximately 20 cubic yards of concrete are all that remain to be poured; and

WHEREAS, the Board has reviewed the affidavits from the architect and general contractor and the other evidence submitted, and agrees that they support the conclusion that 100 percent of the excavation, 100 percent of the footings, and a substantial amount of the other elements of the foundation were completed as of November 16, 2005; and

WHEREAS, the Board finds all of above-mentioned submitted evidence sufficient and credible; and

WHEREAS, based upon the above, the Board finds that excavation was complete and that substantial progress had been made on the foundation, and additionally, that the applicant has adequately satisfied all the requirements of ZR § 11-331.

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Therefore it is resolved that this application to renew New Building permit No. 301965112-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on October 11, 2006.

Adopted by the Board of Standards and Appeals, April 11, 2006.

14-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Jeanine & Dan Fitzgerald, lessee.

SUBJECT – Application January 24, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting a mapped street contrary to GCL §36, Article 3.

PREMISES AFFECTED – 54 Graham Place, south side Graham Place, 158.86’ west of Beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart, R.A.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner, dated January 19, 2006, acting on Department of Buildings Application No. 402260860, reads:

“A1- The Street giving access to the existing building to be altered is not duly placed on the official map of the City of New York. Therefore :

- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
- b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space [which] is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on April 11, 2006 after due notice by publication in the *City Record*, and then to decision on April 11, 2006, and

WHEREAS, by letter dated February 2, 2006, the Fire Department states that it has reviewed the above project and has

no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, January 19, 2006 , acting on Department of Buildings Application No. 402260860 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 11, 2006”- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 11, 2006.

20-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Mary Jane & Anthony Fortunato, lessee.

SUBJECT – Application February 7, 2006 – Proposed reconstruction and enlargement of a single family dwelling not fronting a mapped street contrary to GCL§36, Article 3. Upgrade existing non-conforming private disposal system in the bed of the service road contrary to Building Department policy.

PREMISES AFFECTED – 38 Kildare Walk, west side of Kildare Walk, 92.51’ north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart, R.A.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION:

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WHEREAS, the decision of the Queens Borough Commissioner, dated January 25, 2006, acting on Department of Buildings Application No. 402221591, reads:

“A1- The Street giving access to the existing building to be altered is not duly placed on the official map of the City of New York. Therefore:

- c) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
- d) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space [which] is contrary to Section 27-291 of the Administrative Code., and

A2- The proposed upgraded private disposal system is in the bed of the service lane contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on April 11, 2006 after due notice by publication in the *City Record*, and then to decision on April 11, 2006, and

WHEREAS, by letter dated February 16, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, January 19, 2006, acting on Department of Buildings Application No. 402221591 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received February 7, 2006”- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 11, 2006.

173-05-A

APPLICANT – Stuart Klein for Trevor Fray, owner.

SUBJECT – Application July 28, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 85-24 168th Place, west side of 168th Place, 200 feet south of the corner formed by the intersection of 18th Place and Gothic Drive. Block 9851, Lot 47, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Stuart Klein.

For Opposition: Lisa Orrantia.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for continued hearing.

92-05-A

APPLICANT – Sheldon Lobel, P.C., for Patrick & Susan Kim, owner.

SUBJECT – Application April 15, 2005 – Proposed enlargement of an existing one family dwelling, not fronting on mapped street, is contrary to Section 36, Article 3 of the General City Law.

PREMISES AFFECTED – 43-36 Cornell Lane, westerly side of Cornell Lane, north of Northern Boulevard, Block 8129, Lot 154, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Zara Fernandes.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for decision, hearing closed.

374-05-BZY thru 399-05-BZY

APPLICANT – Eric Palatnik, P.C., for Carmel Homes LLC, owner.

SUBJECT – Application December 27, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R3-2 Zoning District. Current R3-X Zoning District.

PREMISES AFFECTED – Riga Street, Carmela Court, Mill Road, Block 4690, Lots Nos. 130-135, 135-139, 126-129, 120-125, 110-115, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik and Arthur Tucci.

For Opposition: John Lafemina.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

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Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for decision, hearing closed.

402-05-BZY thru 424-05-BZY

APPLICANT – Eric Palatnik, P.C., for Grymes Hill Estates, Inc., owner.

SUBJECT – Application December 28, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R3-2 zoning district. Current R3-A zoning district.

PREMISES AFFECTED – Tessa Court, Maxie Court, Block 616, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

428-05-BZY thru 431-05-BZY

APPLICANT – Sheldon Lobel, P.C., for Islandview Homes Development Corp., owner.

SUBJECT – Application December 28, 2005 – Proposed extension of time to renew building permits and complete construction of a minor development pursuant to Z.R. 11-332. Current R3-X zoning district.

PREMISES AFFECTED – 475, 473, 471, 470 Father Capodanno Boulevard, located 91.90’ west of Cross Streets, Father Capodanno Boulevard and McLaughlin Street, Block 3500, Tentative Lot Nos. 30, 31, 32, 33. Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Jordan Most and Alto Puletti.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 10 A.M., for continued hearing.

30-06-A

APPLICANT - Eric Hecker, Esq. of Emery Celli, Brinkcerhoff & Abady, LLP for Lamar Outdoor Advertising, lessee, EG Clemente Bros. owner .

SUBJECT - Application February 21, 2006 – For an appeal of the Department of Buildings decision dated January 19, 2006 revoking Advertising sign approvals and permits under Application Nos. 5000684324 and 500684315 in that it allows advertising signs that are not within 1/2 mile of the NYC Boundary and as such are in violation of Section 42-55 of the Zoning Resolution.

PREMISES AFFECTED – 50 South Bridge Street, between

Arthur Kill Road and Page Avenue, Block 7584, Lot 122, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Hecker and Peter Herrigel.

For Administration: Deborah Glikin, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 9, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: 12:00 P.M.

REGULAR MEETING TUESDAY AFTERNOON, APRIL 11, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

338-04-BZ

APPLICANT – Martyn & Don Weston, for Hi-Tech Equipment Rental Inc., owner.

SUBJECT – Application October 12, 2004 – Under Z.R. §72-21 to permit the proposed construction of a one story and cellar extension to an as-of-right six story hotel, and to permit on grade accessory parking and below grade showroom/retail use, in an R5 zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 806/14 Coney Island Avenue, west side, 300.75’ north of Ditmas Avenue, Block 5393, Tentative Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated October 3, 2005, acting on Department of
Buildings Application No. 301933790, reads, in pertinent part:

“1. Catering facilities, as part of the proposed
transient hotel (UG5), is not a permitted as- of-
right use in a R5 district, as per Section 22-00 . . .

2. Meeting room, as part of the proposed
transient hotel (UG 5) is not a permitted as-of-
right use in a R5 district . . .

3. Accessory parking, as part of the proposed
transient hotel (UG 5) is not a permitted as-of-
right use in a R5 district . . .

4. The commercial bulk exceeds the allowable
commercial bulk in a C8-2 district, as per Sec.
33-122 . . .”; and

WHEREAS, this is an application under ZR § 72-21, to
permit, on a site partially within a C8-2 zoning district and
partially within an R5 zoning district which has previously been
before the Board, a proposed transient hotel with an accessory
catering facility/meeting room and accessory parking, which is
contrary to ZR §§ 22-00 and 33-122; and

WHEREAS, the applicant proposes to construct a four-
story Use Group 5 transient hotel, with 54 rooms, a meeting
room, and a catering hall, with total floor area of 38,932, a total
Floor Area Ratio (FAR) of 1.21, a street wall height of 20’-0”, a
total height of 48’-0”, and a maximum of 75 accessory attended
parking spaces in an open parking lot; and

WHEREAS, the four-story portion of the building will be
set back 24 feet from the street wall, as well as at the rear; and

WHEREAS, a portion of the hotel, as well as the majority
of the accessory parking lot, will be within the R5 zoning
district, thus necessitating the requested use waivers; and

WHEREAS, the commercial FAR within the C8-2 district
is approximately 2.5, which exceeds the amount that is
permitted (2.0 FAR), thus necessitating the requested bulk
waiver for the C8-2 portion of the zoning lot; and

WHEREAS, the applicant initially proposed to construct a
six-story hotel, with 75 rooms, a total floor area of 57,244 sq.
ft., a total FAR of 1.83, and approximately 32,000 sq. ft. of
below grade commercial use, including a catering hall and
meeting and show rooms, as well as 62 accessory parking
spaces; and

WHEREAS, the Board expressed concern about this
proposal, noting that while the cellar space and the rooms
therein did not technically count as zoning floor area, its
inclusion in the program of the project nevertheless resulted in a
significantly increased commercial presence, based on usable
floor area, which was too large for the character of the
community in terms of size, parking and traffic impacts, and
which did not represent the minimum variance; and

WHEREAS, the applicant’s second proposal was a five-
story hotel, with 57 rooms, a total floor area of 49,924 sq. ft., a
total FAR of 1.55, with a catering hall and a meeting room, but
no below grade show rooms; and

WHEREAS, after the Board continued to express
concerns, the applicant submitted a third proposal, which was a
four-story hotel, with 54 rooms, a total floor area of 44,452 sq.
ft., a total FAR of 1.38, a catering hall and a meeting room, and
parking for 63 cars; and

WHEREAS, the Board expressed concern about the
proposed occupancy of the catering hall (340 persons) and the
meeting room (470 persons), as well as the limited parking; and

WHEREAS, the applicant responded to these concerns by
submitting the current version, as described above, which the
Board finds acceptable in terms of impacts and minimum
variance; and

WHEREAS, a public hearing was held on this
application on September 13, 2005, after due notice by
publication in the *City Record*, with continued hearings on
November 15, 2005, January 10, 2006, March 14, 2006 and then
to decision on April 11, 2006; and

WHEREAS, the premises and surrounding area had a site
and neighborhood examination by a committee of the Board,
consisting of Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board No. 12, Brooklyn,
recommends disapproval of the application, contending that
hotel use is inappropriate for the surrounding community; and

WHEREAS, certain neighbors to the premises also
appeared in opposition to this application, alleging that illegal
activity would occur at the hotel; however, the Board has before
it no evidence in support of this contention; and

WHEREAS, certain other neighbors raised concerns about
parking impacts; and

WHEREAS, the subject premises is located on the south
side of the Coney Island Avenue, and consists of four
contiguous tax lots (Lots 27, 50, 93, & 140); and

WHEREAS, as noted above, the premises is partially
within a C8-2 zoning district and partially within an R5 zoning
district; the R5 zoning district begins approximately 100 ft. from
the Coney Island Avenue street line, though it does not bisect
the site in a straight line, due to the trapezoidal shape of the
subject block; and

WHEREAS, Lot 27, which has a total lot area of 16,972
sq. ft., fronts on Coney Island Avenue to a width of 120’-4”, and
extends approximately 137 ft. from the street line; thus, roughly
16,972 sq. ft. of the lot area is within the C8-2 district, and
roughly 4,939 sq. ft. is within the R5 district; and

WHEREAS, Lot 93, which has a total lot area of 13,585
sq. ft., is an interior, landlocked lot, and is adjacent to the east of
Lot 27, and is almost entirely within the R5 district; and

WHEREAS, Lot 140, which has a total lot area of 800 sq.
ft., is another interior, landlocked lot that is adjacent to Lot 93 to
the north, and is located entirely within the R5 district; and

WHEREAS, Lot 50, which has a total lot area of 796 sq.
ft., is a 5 ft. wide sliver lot with frontage on Ditmas Avenue, and

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is adjacent to Lot 93 to the west; it is bisected by the district boundary line; and

WHEREAS, the total lot area over the entire site is 32,153 sq. ft.; approximately 13,354 sq. ft. is within the C8-2 district, and approximately 18,799 sq. ft. is within the R5 district; and

WHEREAS, the majority of the hotel, including the four-story section, will be constructed on Lot 27, within the C8-2 district; and

WHEREAS, a portion of the hotel, including the first floor that will be occupied by the catering hall and the meeting room, will be constructed on Lot 27, within the R5 district; and

WHEREAS, the accessory parking lot will be constructed on Lots 93 and 140, primarily with the R5 district; and

WHEREAS, all of Lot 50 will be landscaped with plants; and

WHEREAS, the parking lot will be accessed from Coney Island Avenue through a driveway located on Lot 36 (under the same ownership as the site before the Board), which is adjacent to Lot 93 to the north, and which will be the affected by a restrictive declaration for access, described in more detail below; and

WHEREAS, the site is currently improved upon with a one-story garage-type building, constructed on Lot 27, currently occupied by an automotive use and

WHEREAS, auto repair use within this one-story building was previously approved by the Board in 1948, under BSA Cal. No. 65-48-BZ, when the site was partially within a residence district; this grant was subsequently modified and extended at various times up until 1985; and

WHEREAS, at some point prior to 1985, the use was discontinued; thus, under BSA Cal. No. 1016-84-BZ, the Board permitted the reestablishment of the grant; and

WHEREAS, the building on the site was subsequently permitted to be enlarged in 1997, under BSA Cal. No. 49-95-BZ; and

WHEREAS, because the proposed hotel development is in a different use group from any use previously approved by the Board, and because the configuration of the development site have changed through the addition of new tax lots, the applicant was required to file a new variance application; and

WHEREAS, the applicant proposes to re-use the existing one-story building on the site as the first floor of the hotel; there will be no cellar level as originally proposed; and

WHEREAS, the applicant states that the catering hall and the meeting room will not be used simultaneously, but, at the Board's request, nevertheless analyzed the parking requirement based upon simultaneous use; and

WHEREAS, the applicant states that the parking lot, and the entrance to it, will be closed from 11PM until 7 AM daily; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site divided by a district boundary line between the C8-2 and R5 district, where permitted uses in each district are prohibited in the other district; (2) the site includes

interior, landlocked lots without any street frontage in the C8 district portion; and (3) the site includes a lot that is only 5'-0" wide; and

WHEREAS, as an initial matter, the Board observes it has previously concluded that the Lot 27 portion of the site is unique, due to the location of the district boundary; and

WHEREAS, the Board also recognizes that the interior, landlocked lots (Lots 93 and 140) can not be used for either residential or commercial use, both due to their division by the district boundary and because of their landlocked nature; and

WHEREAS, the Board also agrees that Lot 50 is unusable, due to its width; however, given the small square footage of this lot relative to the entire development site, the Board does not view its lack of development potential to be an actual hardship; and

WHEREAS, finally, the Board notes that the shape of the development site is unusual, and further compromises conforming development over the entire site; and

WHEREAS, accordingly, the Board finds that certain of the aforementioned unique physical conditions – namely, the existence of the district boundary, the landlocked status of a portion of the lot, and the lot's unusual shape - when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing a retail development scenario, with 16,692 sq. ft. of floor area located in the existing one-story building; and

WHEREAS, the applicant concluded that such a scenario would not result in a reasonable return, due to costs related to the above-stated unique physical conditions; and

WHEREAS, however, the Board had concerns regarding certain aspects of this study, and identified them at hearing; and

WHEREAS, specifically, the Board questioned the claimed site valuation, and suggested that it was too high because it ascribed too much value to the interior, landlocked portions of the site, that, while zoned for residential use, were unable to sustain such use; and

WHEREAS, in response, the applicant revised its analysis, and adjusted the site valuation based upon the Board's comments; and

WHEREAS, the Board also questioned whether the return from a retail scenario could be increased by adding a second and third floor to the existing building for office use, using available commercial floor area allowed under the district; and

WHEREAS, the applicant, in a subsequent submission, analyzed a three-story retail/office scenario, and concluded that it did not realize a reasonable return, due to construction costs related to the adaptation of the existing building to accommodate the additional floors; and

WHEREAS, based upon its review of the subsequent submissions of the applicant, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

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WHEREAS, the Board also notes that the landlocked nature of the portion of the site within the R5 district and its shape restrict any possibility of conforming use in said portion; and

WHEREAS, as a result, in both conforming scenarios as presented by the applicant, the site is significantly under-built in terms of actual available development rights; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant initially noted that the proposed hotel use is a permitted use within C8-2 district portion of the site; and

WHEREAS, however, the Board observes that except for some auto repair uses and other commercial uses along Coney Island Avenue, the site is adjacent to two to three story dwellings and other residentially compatible uses such as a playground; and

WHEREAS, thus, as discussed above, notwithstanding the permissibility of hotel use on the commercially zoned portion of the site, the Board expressed reservations about both the amount of commercial floor area (whether zoning floor area or not) initially proposed over the entire site and the proposed height, given the potential impact that the bulk and height could have on nearby residential uses; and

WHEREAS, more specifically, the Board expressed concern that the hotel contained excessively large accessory use spaces (i.e., catering hall, meeting rooms, show rooms, retail spaces) and too many individual rooms, which increased the bulk and height, which would, in turn, create negative impacts; and

WHEREAS, the applicant subsequently modified the proposal to the current version, which reflects a reduced height and floor area; and

WHEREAS, the Board notes that the reduced height is more in context with other four-story buildings along Coney Island Avenue; and

WHEREAS, the Board also notes that the currently proposed bulk and the amount of rooms reflects a lesser-intensity commercial presence on the site, which will not negatively impact the adjacent uses or the character of the neighborhood; and

WHEREAS, the Board also observes that the four-story portion of the proposed hotel will be set back 24 feet from the street wall, so that the street wall height along Coney Island Avenue will remain approximately what it is now; and

WHEREAS, the Board further notes that the commercial encroachment into the R5 district is restricted to the same degree of encroachment that currently exists on the site; and

WHEREAS, in addition to the height and bulk of the proposed hotel, the Board, over the course of the hearing process, expressed concern about the traffic and parking impacts that could be generated by the hotel; and

WHEREAS, the Board observes that the accessory parking lot is almost entirely within the R5 district, and that residential uses abut the proposed lot; and

WHEREAS, in response to this concern, the applicant proposes to keep the parking lot closed from 11 PM until 7 AM, and states that all lighting in the parking area will be directed downwards and away from the adjacent residential uses; and

WHEREAS, the applicant also proposes to install and maintain proper screening around the parking lot, consisting of a 6 ft. high wooden fence and 3 ft. planting strips; and

WHEREAS, the Board also expressed concern about the amount of parking generated by the proposed bulk; and

WHEREAS, the Board observed that part of the problem was that the applicant stated that the meeting room and the catering hall would not be used simultaneously, and calculated the parking requirement based on this assumption; and

WHEREAS, however, the Board rejected this assumption, and asked that the applicant revise the parking analysis to assume simultaneous uses of both spaces; and

WHEREAS, the applicant responded by calculating the parking requirement assuming simultaneous use of both spaces; and

WHEREAS, the applicant concludes that based upon the amount of rooms and the proposed occupancy of the catering and meeting rooms, the parking requirement is 55 cars; the proposed accessory parking lot will provide spaces for 75 cars, which shall only be accessory to the hotel and catering uses and shall not be used for transient commercial parking or other uses; and

WHEREAS, the Board notes that the applicant agreed to landscape Lot 50, which will improve the appearance of this site, and also agreed to provide opaque fencing around the parking lot and Lot 50 adjacent to the residences, which will screen the parking area from the adjacent residential uses; and

WHEREAS, the Board also notes that the applicant has executed and recorded a driveway restrictive declaration, which will dedicate a portion of lot 36 for access purposes to the accessory parking lot from Coney Island Avenue; and

WHEREAS, the Board has reviewed this declaration, and has determined that its form and content are acceptable; and

WHEREAS, finally, the Board notes that while the site will be occupied by a Use Group 5 hotel and parking lot, this use will replace a more intensive Use Group 16 commercial use, with loading and unloading of trucks, that currently uses the entire site; and

WHEREAS, moreover, the hotel will occupy the same footprint as the existing building; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the trapezoidal shape of the block and the placement of the district boundary line; and

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WHEREAS, as noted above, in addition to its concerns about the impact that the initial and intermediate proposed hotel buildings would have on the community and adjacent residential uses, the Board also concluded that these two proposals did not represent the minimum variance; and

WHEREAS, accordingly, in addition to the revised analysis of the conforming scenario, at the request of the Board, the applicant also submitted an analysis of the current proposal, which is much smaller, scaled-back version of the initial proposal; and

WHEREAS, the applicant concluded that the current proposal would realize a minimal return sufficient to overcome the site's inherent hardship; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA051K, dated October 12, 2004; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R5 zoning district and partially within an C8-2 zoning district which has previously been before the Board, a proposed transient hotel with an

accessory catering facility/meeting room and accessory parking, which is contrary to ZR § 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 23, 2006"- four (4) sheets and marked "Received March 28, 2006"- one (1) sheet; and *on further condition*:

THAT all fencing as shown on the BSA-approved plans shall be opaque;

THAT all lighting on the site shall be directed downwards and away from any adjacent residential use;

THAT a maximum of 75 and a minimum of 55 attended parking spaces shall be provided in the accessory parking lot;

THAT there shall be no commercial parking in the accessory parking lot;

THAT the roll down gate at the entrance of the driveway to the parking lot shall be closed and locked from 11 PM to 7 AM;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the recording information for the driveway restrictive declaration shall be listed on the certificate of occupancy;

THAT the following shall be the bulk parameters of the proposed building: a maximum of four stories, with no cellar, with 54 hotel rooms, a meeting room with a capacity of 270 occupants, a catering hall with a capacity of 330 occupants, a total floor area of 38,932, a total FAR of 1.21, a wall height of 20'-0", a total height of 48'-0", setbacks of 24 ft. from the street wall and the rear lot line at the second floor, and a maximum of 75 accessory attended parking spaces in an open parking lot, all as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 11, 2006.

373-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Brendan McCartan, owner.

SUBJECT – Application November 26, 2004 – Under Z.R. §72-21 in an R4 district, permission sought to allow the construction of a two-story one-family dwelling on a 25' x 53.55' lot consisting of 1,338 SF. The structure does not comply with floor area allowed, open space, lot area, front

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yard.

PREMISES AFFECTED – 57-69 69th Street, north side of 69th Street 24' west of 60th Avenue, Block 2830, Lot 33, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner, dated November 15, 2004, acting on Department of Buildings Application No. 401843243, reads, in pertinent part:

“ZR 23-141, Floor area ratio (FAR) exceeds that permitted;

ZR 23-141, Open space ratio (OSR) is deficient from that required;

ZR 23-45, Proposed front yard is contrary to the requirements for a corner lot;

ZR 23-32, Minimum area of lot is contrary to section 23-32 . . .”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the proposed construction of a 1.49 Floor Area Ratio, single-family, two-story plus attic, (FAR) home that exceeds the permitted FAR and Open Space Ratio (OSR), does not provide the required front yard or side yards, and does not have the required lot area, contrary to ZR §§ 23-141, 23-45, and 23-32; and

WHEREAS, the applicant originally proposed a 1.8 FAR, two-family dwelling that would have required additional variances as to parking and density, and a smaller rear yard, but abandoned this proposal in response to concerns of the Community Board that it was overreaching and not in context with the surrounding neighborhood; and

WHEREAS, the applicant subsequently revised the proposal to the current version; and

WHEREAS, a public hearing was held on this application on November 1, 2005 after due notice by publication in *The City Record*, with continued hearings on December 6, 2005, January 10, 2006, February 7, 2006 February 28, 2006, and then to decision on April 11, 2006; and

WHEREAS, Community Board 5, Queens, recommends approval of this application, on condition that the dwelling should be a one-family residence, that the size should be limited to 25 ft. in width and 40 ft. in depth, that one parking space be provided, and that the rear yard should be 13.55 ft. in depth; and

WHEREAS, the Queens Borough President recommends approval of this application on condition that the rear yard of the proposed development be more consistent with the surrounding built context; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins; and

WHEREAS, the site is located on the north side of 68th Street, 24 ft. west of 60th Avenue; and

WHEREAS, the site is 25'-0" in width and approximately 53'-4" in depth, with a total lot area of 1,339 sq. ft.; and

WHEREAS, the applicant states that the lot has existed in its present configuration since prior to 1961; and

WHEREAS, the site is currently improved upon with a one-story 471 sq. ft. home, that the applicant contends is in poor condition and is an extremely small structure for a single-family home; and

WHEREAS, the applicant states that the home can not be enlarged as of right, and thus proposes its demolition and replacement; and

WHEREAS, the applicant proposes to construct a two-story, single-family home, with one parking space located in a garage; and

WHEREAS, the proposed home will be 25 ft. in width by 40 ft. in depth; have a total residential floor area of 2,000 sq. ft. (1,816 sq. ft. is the maximum permitted); a total residential FAR of 1.49 (1.35 is the maximum permitted); an OSR of 26% (45% is the minimum required); no front yard (a front yard of 10 ft. is required); no side yards (two side yards of 8 ft. and 5 ft. are required; and a 13 ft. rear yard (no rear yard is required because the lot is within 100 ft. of a corner); a single off-street parking space will be provided; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is a pre-existing 25'-0" ft. wide and 53'-6" deep lot that can not accommodate as of right development; and

WHEREAS, as to uniqueness, the applicant has submitted a land use survey and property chart that illustrates that of the 147 total properties reflected in the survey's radius, only four have a depth equal to the subject premises; the majority of the lots have depths of 100 ft.; and

WHEREAS, the applicant represents that the requested side yard waivers are necessary to develop the site with a habitable home; and

WHEREAS, the Board observes that if the applicant were to provide the required 5 ft. and 8 ft. side yards, the result would be a home of approximately 12 ft. in width; and

WHEREAS, likewise, the front yard waiver is necessary in order to create a home of a reasonable depth, while still providing a rear yard that would provide sufficient distance between the proposed home and the neighboring home abutting the rear of the site; and

WHEREAS, the Board observes that the lot area is a pre-existing condition, and that the existing home is sub-standard when measured against modern requirements for a single-family home; and

WHEREAS, the Board further observes that the FAR

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waiver is necessary because the site is small and is unable to accommodate the required parking space in a side yard or within the home where it would not count as floor area, unlike other sites where such an accommodation can be made; and

WHEREAS, the Board notes that the FAR increase is only necessary to address the increase in FAR caused by the garage; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the Board observes that the applicant originally proposed a two-family home with an FAR of 1.8; and

WHEREAS, in response to Board concerns, the applicant reduced the FAR to 1.49 (0.14 of which is floor area for the interior garage), which is an FAR that the Board agrees is consistent with the bulk of the homes in the neighborhood; and

WHEREAS, the Board also expressed concern that a two-family home would be out of context with the character of the neighborhood, and, in response, the applicant revised the proposal to reflect a single-family home; and

WHEREAS, the Board notes that the absence of side yards and a front yard will not negatively impact the adjacent uses, as the site to the west is occupied commercially, the site to the east is on a corner and has minimal side yards, and the proposed development will leave a 13 ft. rear yard as a buffer to the home located on the lot abutting the rear lot line of the premises; and

WHEREAS, the Board further notes that the location of the home on the front lot line is consistent with the context along 69th Street on the subject block; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant reduced the density and FAR of the proposed home and increased the rear yard in response to Board concerns that the initial proposal did not reflect the minimum variance; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR §72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part

617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, within an R4 zoning district, the proposed construction of a 1.49 Floor Area Ratio, single-family, two-story plus attic, home that exceeds the permitted FAR and OSR, does not provide the required front yard or side yards, and does not have the required lot area, contrary to ZR §§23-141, 23-45, and 23-32; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 28, 2006"-(2) sheets and "April 7, 2006"-(3) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 1.49; a floor area of 2,000 sq. ft.; an OSR of 26%; a rear yard of 13 ft.; and one parking space in an internal garage;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 11, 2006.

65-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application March 16, 2005 – Special Permit filed pursuant to sections 11-411 and 11-413 of the zoning resolution to request the instatement of an expired, pre-1961, variance, and to request authorization to legalize the change of use from a gasoline service station with accessory automotive repairs, to an automotive repair facility without the sale of gasoline, located in a C1-4/R8 zoning district.

PREMISES AFFECTED – 269-275 East Burnside Avenue, northside of East Burnside Avenue between Ryer Avenue and Anthony Avenue, Block 3156, Lot 85, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

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Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Bronx Borough Commissioner, dated February 24, 2005, acting on Department of Buildings Application No. 200929200, reads:

“Continued use of the automotive service station is contrary to Board of Standards and Appeals resolution 931-86-BZ, and is not permitted as-of-right in an R8/C1-4 zoning district.”; and

WHEREAS, this is an application for a reinstatement of a prior Board approval and an extension of term, pursuant to ZR § 11-411, and a legalization of a change in use from a gasoline service station with accessory automotive repairs (UG 16), to an automotive service station without the sale of gasoline (UG 16), pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on March 14, 2006 after due notice by publication in the *City Record*, and then to decision on April 11, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 5, Bronx, recommends approval of this application, on condition that there be no parking or repairs on the sidewalk, that a fence without barbed wire be installed around the property, and that exterior signage be removed; and

WHEREAS, the premises is located on the north side of East Burnside Avenue between Ryer Avenue and Anthony Avenue, in a C1-4 zoning district within an R8 zoning district; and

WHEREAS, the subject zoning lot is trapezoidal-shaped with frontage on East Burnside Avenue, and has a total lot area of approximately 13,106 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,624 sq. ft. automotive service station, with accessory parking for vehicles awaiting service; and

WHEREAS, the Board originally granted a variance to permit the erection and maintenance of a gasoline service station with accessory uses at the site, including the parking and storage of more than five cars, for a term of fifteen years, on December 10, 1957, under BSA Cal. No. 91-27-BZ Vol. II; and

WHEREAS, subsequently, the variance was re-established, amended, and extended by the Board at various times, most recently on January 6, 1988, under BSA Cal. No. 931-86-BZ, to permit an extension of term for a gasoline service station with accessory uses for a term of five years, expiring on January 6, 1993; and

WHEREAS, the applicant represents that the premises is improved upon with an existing automotive service station without the sale of gasoline (UG 16); and

WHEREAS, the applicant represents further that there has been no enlargement to the zoning lot or the building, and the only change to the site from the time of the last grant is the removal of the gasoline pumps; a UG 16 use has been

continuous since the expiration noted above; and

WHEREAS, the applicant now proposes to reinstate the prior grant, legalize the existing use, and obtain a new 10-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use from one non-conforming use to another non-conforming use in the same use group; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-411 and 11-413, for a reinstatement of a prior Board approval, an extension of term, and a legalization of a change in use from a gasoline service station with accessory automotive repairs (UG 16), to an automotive service station without the sale of gasoline (UG 16); *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked “Received March 16, 2005”-(1) sheet and “March 28, 2006”-(2) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on April 11, 2016;

THAT the hours of operation shall be from 8 A.M. to 7 P.M., Monday through Saturday;

THAT no repairs or servicing of automobiles shall take place on the sidewalk;

THAT no gas pumps shall be installed on the site;

THAT barbed wire or razor wiring will not be installed and any existing barbed or razor wire will be removed;

THAT the lot shall be kept free of dirt and debris;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the layout of the property, location and size of the fence shall be as approved by the Department of Buildings;

THAT all signage shall comply with C1-1 zoning regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

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Adopted by the Board of Standards and Appeals, April 11, 2006.

133-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Yitzchok Shindler.
SUBJECT – Application November 30, 2005 – Under Z.R. §73-622 to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per Z.R. §23-141 of the Zoning Resolution. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1231 East 21st Street, southeast corner of Avenue K and East 21st Street, Block 7621, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Sondra Safier.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 24, 2005, acting on Department of Buildings Application No. 301691097, reads:

“The proposed enlargement of the existing one family residence in an R2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the Open Space Ratio and is contrary to section 23-141 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the legalization of an existing detached single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR) and Open Space Ratio (OSR), contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on February 7, 2006, after due notice by publication in *The City Record*, with continued hearings on February 7, 2006 and March 14, 2006 and then to decision on April 11, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the

Board, consisting of Chair Srinivasan, Vice Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application because it opposes legalization of completed work; and

WHEREAS, the subject lot is located on 21st Street, at the southeast corner of 21st Street and Avenue K; and

WHEREAS, the subject lot has a total lot area of 5,000 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks to legalize the increase in the floor area from 2,569 sq. ft. (0.51 FAR) to 4,135 sq. ft. (0.83 FAR); the maximum floor area permitted is 2,500 sq. ft. (0.50 FAR) or 2,750 sq. ft. (0.60 FAR), with attic; and

WHEREAS, the applicant also seeks to legalize the decrease in the OSR from 151 percent to 75 percent; the minimum required OSR is 150 percent; and

WHEREAS, two complying front yards of 15 feet each, one complying side yard of eight feet, and one complying side yard of five feet, as required for a corner lot in the subject zoning district, have been maintained; and

WHEREAS, the existing street wall height of 24 ft., 2 in. and total building height of 35 ft., are also in compliance; and

WHEREAS, the Board notes that the applicant submitted into the record professionally-certified plans filed at the DOB for an alteration permit, to enlarge the existing building as-of-right; and

WHEREAS, the Board notes that these plans show that much of the original home would be retained, and that it would be enlarged by making several additions primarily on the second floor and attic; and

WHEREAS, however, during the process of constructing the as-of-right alterations, the contractor hired by the owners proceeded illegally to construct floors within voids and double height spaces that were to be retained under the as-of-right alteration permit; and

WHEREAS, the Board notes that this construction within the voids and double height spaces creates new floor area, rendering the building non-compliant with FAR and OSR, and necessitating the instant special permit application; and

WHEREAS, at hearing, the property owners stated that they did not have knowledge that their home was being enlarged in floor area beyond what was permitted through the as-of-right alteration permit; and

WHEREAS, the Board did not find such statements credible or persuasive; and

WHEREAS, nonetheless, though the Board does not condone applications for legalization of work already completed in violation of issued permits, the relief sought in the instant application is within the parameters of the relief that the Board can grant and has granted in the past; and

WHEREAS, specifically, the Board notes that the special permit text allows it to waive FAR and OSR provisions to the degree that is being requested; and

WHEREAS, moreover, the applicant represents that

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after construction began, it was discovered that the home's original framing had been severely damaged by termites and age; and

WHEREAS, the applicant further represents that the project's contractor concluded that the original home could not be saved as a result of the damage; and

WHEREAS, at hearing, the Board requested records documenting the need to demolish the pre-existing building, which was not contemplated or reflected in the professionally-certified plans for the as of right enlargement; and

WHEREAS, the applicant presented the Board with affidavits from a contractor and plumber asserting that, upon further inspection, they discovered that the house's wood framing had suffered severe termite damage, and damage due to age, such that it was beyond repair; and

WHEREAS, the Board has reviewed the affidavits from the contractor and plumber, and agrees that they support the conclusion that the original wood framing could not be retained; and

WHEREAS, thus, leaving aside the contention that the owners did not know that work was done in violation of the as of right alteration permit, the Board acknowledges that such work may have been necessary given the damage to the existing home; and

WHEREAS, further, the applicant rebuilt on the existing foundations as contemplated under the as of right permit, which the Board views as evidence of an intent to comply with the permit, absent the termite damage; and

WHEREAS, as to the effect of the enlargement, the Board finds that the completed building neither alters the essential character of the surrounding neighborhood, nor impairs the future use and development of the surrounding area; and

WHEREAS, specifically, the Board finds that the increase from 0.51 FAR to 0.83 FAR is modest, and that neither the FAR nor the OSR waiver results in a home that alters the essential character of the neighborhood or is incompatible with other nearby homes; and

WHEREAS, the completed building does not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the legalization of an enlargement of a detached single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio and Open Space Ratio,

contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application, marked "Received January 11, 2006"- (11) sheets and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT DOB shall inspect all work performed prior to issuance of any certificate of occupancy;

THAT the total FAR on the premises shall not exceed 0.83;

THAT two front yards of 15 feet each, one side yard of eight feet, and one side yard of five feet will be maintained;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 11, 2006.

146-05-BZ

APPLICANT – Howard Weiss, Esq., Davidoff, Malito & Hutcher,LLP, for Spafumiere Inc., lessee, Manhattan Embassy Co., owner.

SUBJECT – Application June 10, 2005 – Approval sought for a proposed physical cultural establishment located on a portion of the first floor of a mixed-use building. The PCE use will contain 2,300 square feet. The site is located in a C1-9 TA Zoning District.

PREMISES AFFECTED – 900 Second Avenue, a/k/a 884-900 Second Avenue, 301-303 East 47th Street, 300-306 East 49th Street, Block 1340, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Patricia Prothro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 13, 2005, acting on Department of Buildings Application No. 104063656, reads, in pertinent part:

“Proposed change of use to physical cultural establishment is not as of right as per 32-00 (ZR) &

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section 12-10 (ZR) definition ‘physical cultural establishment’.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C1-9 zoning district in a Special Land Use Transit District (TA), the legalization of an existing physical culture establishment (“PCE”) located on the ground floor of an existing 21-story residential building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on March 14, 2006, after due notice by publication in *The City Record*, and then to decision on April 11, 2006; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the New York City Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the east side of Second Avenue, between 47th and 48th Streets, and has a lot area of 20,010 sq. ft.; and

WHEREAS, the subject PCE occupies 2,300 sq. ft. on the ground floor; and

WHEREAS, the applicant represents that the PCE will provide massage services by licensed massage professionals; and

WHEREAS, the PCE will have the following hours of operation: weekdays, 6:30 A.M. to 9:00 P.M. and weekends, 8:00 A.M. to 8:00 P.M.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the legalization of the PCE does not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 05-BSA-136M, dated February 14, 2005; and

WHEREAS, the EAS documents show that the continued operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy;

Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C1-9 (TA) zoning district, the legalization of an existing physical culture establishment located on the ground floor of an existing 21-story residential building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 23, 2006”-(2) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on April 11, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to weekdays, 6:30 A.M. to 9:00 P.M. and weekends, 8:00 A.M. to 8:00 P.M.;

THAT all massages shall be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 11, 2006.

290-02-BZ thru 314-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for

MINUTES

Edgewater Development, Inc., owner. (Taipei Court)
SUBJECT – Application October 24, 2002 – Variance: Z.R. §72-21, to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district's equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners' association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.
PREMISES AFFECTED – 114-01/03/05/07/09/11/13/17/19/15/21/21/23/25/27/29/31/33/35/20/22/24/26/28/30/32/34 Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug, Tom Theodore and Ed Hogan.

For Opposition: Dr. James M. Cervino.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

374-03-BZ thru 376-03-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner.
SUBJECT – Application December 2, 2003 – Variance: Z.R. §72-21, to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district's equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners' association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-17/19/36-A Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug, Tom Theodore and Ed Hogan.

For Opposition: Dr. James M. Cervino.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

229-04-BZ

APPLICANT – Eric Palatnik, P.C., for Absolute Power & Fitness Center, Inc., owner.

SUBJECT – Application June 16, 2004 – Under Z.R. §72-21 – the legalization of an existing physical cultural establishment, occupying approximately 8000 square feet of floor area spread over two stories, located in an R-5 (OPSD) zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 202/04 Caton Avenue, between East 2nd and East 3rd Streets, Block 5325, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 9, 2006, at 1:30 P.M., for decision, hearing closed.

249-04-BZ

APPLICANT – Harold Weinberg, PE for Prince Parkside LLP, owner.

SUBJECT – Application July 13, 2004 – Zoning Variance (bulk) pursuant to ZR §72-21 to allow an enlargement of an existing non-complying UG 2 residential building in an R7-1 district; contrary to ZR §§ 23-121, 54-31, 23-462, 25-241, 23-22.

PREMISES AFFECTED – 205 Parkside Avenue, Brooklyn; located between Ocean Avenue and Parkside Court (Block 5026, Lot 302), Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

For Opposition: Jeffrey Corman, Cecil A. Jordan and Sisi Tahafarro

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for decision, hearing closed.

66-05-BZ

MINUTES

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Inc., owner.

SUBJECT – Application March 16, 2005 – Special Permit filed Under Z.R. §§11-411 and 11-413 of the zoning resolution to request the reinstatement of an expired, pre-1961, variance, and to request authorization to legalize the change of use from a gasoline service station with accessory automotive repairs, to an automotive repair facility without the sale of gasoline, located in a C2-4/R7-1 zoning district. PREMISES AFFECTED – 1236 Prospect Avenue, southeast corner of Prospect Avenue and Home Street, Block 2693, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for continued hearing.

74-05-BZ

APPLICANT – Snyder & Snyder, LLP, for The Island Swim Club, Inc., Ominipoint Communications, Inc., lessee.

SUBJECT – Application March 29, 2005 – Under Z.R. §§73-30 and 22-21 – to permit the proposed construction of a non-accessory radio tower for public utility wireless communications (disguised as a 50-foot tall flagpole), located in an R3-2 zoning district.

PREMISES AFFECTED – 1089 Rockland Avenue, northeast side, between Borman and Shirra Avenues, Block 2000, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert B and Gary A.

For Opposition: Stuart B.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

89-05-BZ

APPLICANT – Stadtmauer Bailkin, LLP (Steven M. Sinacori, Esq.) for 18 Heyward Realty, Inc., owner.

SUBJECT – Application April 12, 2005 – Under Z.R. §72-21 to allow an enlargement of the rear portion of an existing five-story community facility/commercial building; site is located in an R6 district; contrary to ZR §24-11, 24-37 and 24-33.

PREMISES AFFECTED – 18 Heyward Street, Heyward Street, between Bedford and Wythe Avenues, Block 2230, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Richard Bower and Jack Freeman.

For Opposition: Kenneth Fisher.

ACTION OF THE BOARD – Laid over to May 9, 2006, at 1:30 P.M., for continued hearing.

108-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – Under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #74, the companion case, 109-05-BZ is Tax Lot #76 on the same zoning lot.

PREMISES AFFECTED – 224-22 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 13, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug

For Opposition: Bolane Begh and Ira Cooper.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

109-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – Under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #76, the companion case, 108-05-BZ is Tax Lot #74 on the same zoning lot.

PREMISES AFFECTED – 224-26 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 76, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug

For Opposition: Bolane Begh and Ira Cooper.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

MINUTES

132-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sami Alboukai, owner.

SUBJECT – Application May 26, 2005 – Under Z.R. §73-622 to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per ZR 23-141, a rear yard less than the minimum per ZR 23-47 and a perimeter wall height greater than the maximum per ZR23-31. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 220 West End Avenue, west side of West End Avenue between Oriental Boulevard and Esplanade, Block 8724, Lot 158, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Judith Baron and Martin Baron.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

293-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 342 Realty, LLC, owner.

SUBJECT – Application September 29, 2005 – This application is filed pursuant to Z.R. §73-44 to request a Special Permit to allow a reduction of required parking for an as-of-right commercial building located within a C8-1 zoning district.

PREMISES AFFECTED – 8751 18th Avenue, between 18th Avenue and Bay 19th Street approximately 100 feet East of Bath Avenue, Block 6403, Lot 6, Borough of Brooklyn

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Richard Lobel, John Lundstein, Michael Marino and Tom Abilable.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

321-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Little Neck Commons, LLC, owner; Dunkin Donuts, lessee.

SUBJECT – Application November 2, 2005 – Under Z.R. §73-243 – requesting a Special Permit in order to legalize an existing accessory drive-through window in an as-of-right eating and drinking establishment.

PREMISES AFFECT – 245-02 Horace Harding Expressway, South side of Horace Harding Expressway, west of the intersection with Marathon Parkway, Block 8276, Lot 100, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

19-06-BZ

APPLICANT – Sheldon Lobel, P.c., for MiCasa HDFC, owner.

SUBJECT – Application January 27, 2006 – Under §72-21 to permit a proposed eight-story residential building which requires variance of Z.R. §§23-145 (floor area), 23-633 (height and setback) 25-25c (parking), 23-851(court regulations) and 23-861 (legal window), located in an R7-1 zoning district.

PREMISES AFFECTED – 745 Fox Street, entire block front of East 156th Street between Fox Street and Beck Street, Block 2707, Lot 11, Borough of The Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Richard Lobel, Tony Shitemi, Samir Shah and Carol Jackson.

For Opposition: Deborah Stuart.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: 5:30 P.M.

BULLETIN

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Volume 91, Nos. 17-18

May 3, 2006

DIRECTORY

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Tuesday, April 25, 2006**

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DOCKETS

New Case Filed Up to April 25, 2006

66-06-BZ

22-40 90th Street, East side of 90th Street the corner formed by the intersection of 23rd Avenue., Block 1064, Lot 100, Borough of **Queens, Community Board: 3**. Under 72-21 -

67-06-BZ

2270 Clove Road, Corner of Clove Road and Woodlawn Avenue, Block 3209, Lot 149,168, Borough of **Staten Island, Community Board:** Under 72-21 - To request permission to build the proposed drugstore in a C2-1/R2 district with less than the required parking.

68-06-A

612 Harmony Road, West of Harmony Road (un mapped street) south of 12th Avenue., Block 16340, Lot 50, Borough of **Queens, Community Board: 14**. General City Law Section 36.

69-06-BZY

1599 East 15th Street, Northeast corner of East 15th Street and Avenue P, between Avenue O and Avenue P., Block 6762, Lot 52, Borough of **Brooklyn, Community Board: 14**. Extension of Time-11-331-To complete construction for a minor development for a period of six months.

70-06-A

4 Rockwell Avenue, West of the intersection of Virginia, Block 2998, Lot 1 (tent), Borough of **Staten Island, Community Board: 1**. General City Law Section 35-Proposed dwelling.

71-06-A

8 Rockwell Avenue, West of the intersection of Virginia Avenue and Rockwell Avenue, Block 2998, Lot 3 (tent), Borough of **Staten Island, Community Board: 1**. General City Law Section 35-Proposed dwelling.

72-06-BZ

1 Park Avenue, East south of Park Avenue between E. 32nd Street and East 33rd Street, Block 888, Lot 1, Borough of **Manhattan, Community Board: 5**. SPECIAL PERMIT - 73-36-To allow a Physical Culture Establish within portions of a existing commercial building.

73-06-BZ

111 Union Street, Northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of **Brooklyn, Community Board: 6**. SPECIAL PERMIT - 73-36-To permit the legalization of an existing Physical Culture Establishment.

74-06-BZ

1416 80th Street, Southside of 80th Street, approximately 120 feet east of the corner of 80th Street and 14th Avenue., Block 6281, Lot 14, Borough of **Brooklyn, Community Board: 11**. SPECIAL PERMIT - 73-622 - To allow the enlargement of a single family residence, which exceeds allowable floor area23-141, proposes side yards less than the minimum per 23-461 and proposes a rear yard less than the minimum per 23-47.

75-06-BZ

108-20 71st Avenue, Northeast corner of Queens Boulevard and 71st Avenue, Block 2224, Lot 1, Borough of **Queens, Community Board: 6**. Under 72-21 - To permit an increase in the residential bulk, a decrease in the required open space and penetration of the sky exposure plane.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 6, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 6, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

289-58-BZ

APPLICANT – Eric Palatnik, P.C., for David Oil Corporation, owner.

SUBJECT – Application April 25, 2006 - Extension of Term of a variance for ten years, which expired on November 25, 2005, for a gasoline service station (Sunoco Station) and an Amendment to legalize a small convenience store as an accessory to the UG16-Automotive Service Station. The premise is located in an C2-3/R-7A zoning district.

PREMISES AFFECTED – 398-410 Kings Highway, southwest corner of Kings Place, Block 6678, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #11BK

540-84-BZ

APPLICANT – Kenneth H. Koons, for Herman Pieck, owner.

SUBJECT – Application December 8, 2005 - Pursuant to section ZR 52-332 to legalize the change in use of a custom cabinet workshop (UG16A) to auto repair shops (UG16B) and to extend the term of the variance for ten years. The previous term expired June 10, 2006. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, southwest corner of Bolton Avenue, Block 3473, Lot 43, Borough of The Bronx.

COMMUNITY BOARD #9BX

335-88-BZ

APPLICANT – Eric Palatnik, P.C., for 5808 Flatlands Realty Corp., owner.

SUBJECT – Application December 16, 2005 - Pursuant to ZR 11-411 for the Extension of Term of Variance which expired on July 3, 2005 and to Waive the Rules of Practice and Procedure to file more than 30 days after expiration. The use on site is for an automotive service station (Sunoco) with minor auto repairs and accessory convenience store.

PREMISES AFFECTED – 5808/28 Flatland Avenue,

southwest corner of East 59th Street, and Flatlands Avenue, Block 7784, Lot 41, Borough of Brooklyn.
COMMUNITY BOARD #18BK

APPEALS CALENDAR

400-04-A

APPLICANT – Sheldon Lobel, P.C., for Sangrok Lee, owner.

SUBJECT –Application December 23, 2004 - Proposed construction of 2, 2 story semi-detached 2 family homes which lie in the bed of a mapped street, (Depew Avenue) is contrary to GCL Section 35. Premises is located in an R3-1 Zoning District.

PREMISES AFFECTED – 42-01 & 42-03 249th Street, 41st Avenue, Little Neck Parkway, 43rd Avenue, and 249th Street, Block 8127, Tentative Lot Number 42 & 45, Borough of Queens.

COMMUNITY BOARD #11Q

299-05-A

APPLICANT – Sheldon Lobel, P.C., for Henry Cheung, owner.

SUBJECT – Application October 4, 2005 - Proposal to build one, two story, one family home which lies in the bed of a mapped street (Getz Avenue), which is contrary to Section 35 of the General City Law, Borough of Queens.

PREMISES AFFECTED – 369 Wilson Avenue, north side of Wilson Avenue between Eltingville Boulevard and Ridgewood, Block 5507, Lot 13, Borough of Staten Island.

COMMUNITY BOARD #3SI

345-05-A

APPLICANT – Marcus Marino Architects, for Lawrence M. Garten, owner.

SUBJECT – Application December 2, 2005 - To permit construction of a 3 story ,2 family dwelling not fronting on a mapped street is contrary to Section 36 of the General City Law, Premises is located within the R3-A Growth Management Area.

PREMISES AFFECTED – 81 White Plains Avenue, 150' south east of St. Mary's Avenue, 50.99' fronting on White Plains Avenue, Block 2972, Lot 35, Borough of Staten Island.

COMMUNITY BOARD #1SI

8-06-A & 9-06-A

APPLICANT – Victor K. Han, for Kim Dong Ouk, owner.

SUBJECT – Application January 11, 2006 - Proposed

CALENDAR

construction of a two family semi- detached dwelling located within the bed of a mapped street which is contrary to Section 35 of the General City Law, Block 5380, Lot 49, Borough of Queens.

PREMISES AFFECTED – 42-32 149 Place, West side of 149 Place, 255' N/W of Beech Avenue, Block 5380, Lot 49, Borough of Queens.

42-34 149 Place, West side of 149 Place, 255' N/W of Beech Avenue, Block 5380, Lot 50, Borough of Queens,

COMMUNITY BOARD #7Q

JUNE 6, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 6, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

14-05-BZ

APPLICANT – The Law Office of Fred Becker, Esq. for Resorts 56 Inc. dba as Spa Ja, lessee; 8th & 56th Street Associates, owner.

SUBJECT – Application January 26, 2005 - §73-36 Special Permit – to allow a physical Culture establishment on second and third floor of a three story commercial building. Premises is located within the C6-4 (CL) zoning district.

PREMISES AFFECTED – 300 West 56th Street – southwest corner of West 56th and 8th Avenue, Block 1046, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #4M

199-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Stefano Troia, owner.

SUBJECT – Application August 23, 2005 - pursuant to ZR § 72-21 to allow a proposed twelve (12) story residential building with ground floor retail containing eleven (11) dwelling units in an M1-6 Zoning District; contrary to ZR § 42-00.

PREMISES AFFECTED – 99 Seventh Avenue, located on the southeast corner of 7th Avenue and West 27th Street (Block 802, Lot 77), Borough of Manhattan

COMMUNITY BOARD #5M

303-05-BZ

APPLICANT – Eric Palatnik, P.C., for Adoo East 102 Street Corp., owner; Aspen Fitness, lessee.

SUBJECT – Application October 12, 2005 - under Z.R. §72-21- to permit the legalization of the second floor of an existing two story commercial structure for use as a physical culture establishment. Premises is located within the R8-B zoning district.

PREMISES AFFECTED – 428 East 75th Street, between York and First Avenues, Block 1469, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #8

313-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Douglas Brenner and Ian Kinniburgh, owners.

SUBJECT – October 20, 2005 - Variance under Section 72-21 to allow a proposed enlargement of an existing residential building located in C6-1 and R7-2 districts to violate applicable rear yard regulations; contrary to Section 23-47.

PREMISES AFFECTED – 26 East 2nd Street, Block 458, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #3M

22-06-BZ

APPLICANT –Harold Weinberg, P.E., for Margret Riordan, owner.

SUBJECT –Application February 9, 2006 - Variance: Under Z.R. §72-21 to permit the enlargement of an existing single family dwelling on a pre-existing undersized lot. The proposed enlargement increases the degree of non-compliance at the front yard, rear yard and side yards; (ZR§23-45, 23-47 and 23-48) the proposed enlargement also exceeds the allowable setback and is contrary to ZR§23-631. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 8 Gotham Avenue, between Fane Court, south side and Shell Bank Creek, Block 8883, Lot 978, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 25, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, February 14, 2006 and February 15, 2006 as printed in the bulletin of February 24, 2006, Volume 91, No. 8. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

414-59-BZ

APPLICANT – Bryan Cave, LLP, for Royal Charter Properties, owner.

SUBJECT – Application December 8, 2005 – Extension of Term of a Variance to allow 77 transient parking spaces at the first and cellar floors of an existing multiple dwelling accessory garage. The premise is located in an R-9 and R-10 zoning district.

PREMISES AFFECTED – 1285 York Avenue, a/k/a 435-445 East 68th Street, Block 1463, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Margery Perlmutter.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application, pursuant to ZR § 11-411, for a reopening and an extension of the term of the prior grant, which expired on December 1, 1979; and

WHEREAS, a public hearing was held on this application on April 11, 2006, after due notice by publication in *The City Record*, and then to April 25, 2006 for decision; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, on December 1, 1959, the Board granted a zoning variance and a Multiple Dwelling Law waiver under the subject calendar numbers to allow a transient parking lot in the cellar and first floor accessory garage to a multiple dwelling located at the subject premises, for a term of 20 years; and

WHEREAS, the applicant explained that due to an administrative oversight, no application to extend the term of the variance was made since the December 1, 1979 expiration; and

WHEREAS, at hearing, the Board questioned the applicant about the inconsistency regarding the total number of parking spaces on each floor of the parking structure, as reflected on the certificate of occupancy and the approved plans;

and

WHEREAS, the applicant responded that the configuration of the 77 spaces, reflected on the plans is correct and that there has been a longstanding error on the certificate of occupancy which applicant will remedy after the Board's decision; and

WHEREAS, the applicant submitted photographs of the notice to tenants posted in the garage which identifies their right to recapture transient parking spaces pursuant to the Multiple Dwelling Law; and

WHEREAS, the Board has reviewed the record and finds that the instant application is appropriate to grant, based upon the evidence submitted.

Therefore it is Resolved that the Board of Standards and Appeals, *reopens and amends* the resolutions, said resolutions having been adopted on December 1, 1959, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten (10) years from April 25, 2006, expiring on April 25, 2016; *on condition*:

THAT there shall be a maximum of 77 parking spaces used for transient parking at the cellar and first floors at the subject premises;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

THAT the above condition and all conditions from the prior resolution shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained within one year of the date of this grant;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB App. No. 104116225)

Adopted by the Board of Standards and Appeals, April 25, 2006.

173-94-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Richard Shelala, owner; Compass Forwarding Co., Inc., lessee.

SUBJECT – Application July 25, 2005 – Reopening for an amendment of variance to permit the change in hours of

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operation of a freight transfer facility. The premise is located in a C2-2(R3-2) zoning district.

PREMISES AFFECTED – 159-15 Rockaway Boulevard a/k/a 165-10 144th Road, southeast corner of Rockaway Boulevard and 144th Road, Block 1327, Lot 17, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a reopening and an amendment to the hours of operation of a freight transfer facility; and

WHEREAS, a public hearing was held on this application on March 7, 2006, after due notice by publication in *The City Record*, laid over for continued hearing on April 11, 2006 and then to decision on April 25, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 13, Queens, withdrew its initial objections to this application, and recommends a conditional approval as it monitors the implementation of the new hours; and

WHEREAS, the subject site is located on the southeast corner of Rockaway Boulevard and 144th Road, and is within a C2-2 (R3-2) zoning district; and

WHEREAS, on January 30, 1996, the Board granted an application under the subject calendar number to permit a one-story enlargement to an existing non-conforming one-story manufacturing building occupied as a freight transfer station, contrary to the district use regulations; and

WHEREAS, this grant was termed for twenty years, to expire January 30, 2016; and

WHEREAS, the hours of operation specified in the original grant are 8 A.M. to 6 P.M, weekdays and 8 A.M. to 4 P.M., Saturdays; the facility was to be closed on Sundays; and

WHEREAS, the applicant represents that due to the recent increase in airport security measures, there are new requirements on tracking and removal of air freight since the original Board grant that include cargo recipients filing an electronic manifest in advance of flight departure, and a four-hour time limit to remove freight from the airport holding area; and

WHEREAS, the applicant represents that because of the new regulations that cargo be removed within four hours of arrival at the airport, the cargo from a client air carrier with Sunday arrivals must be removed from the airport that day; and

WHEREAS, the applicant further represents that if the cargo is not removed within the specified time, then severe

penalties are imposed; and

WHEREAS, at hearing, the Board asked the applicant for documentation on these changes in airport security measures; and

WHEREAS, the applicant provided a letter from the U.S. Customs and Border Protection, Cargo Branch, advising the client air carrier about the regulations, which went into effect August 13, 2004; and

WHEREAS, at hearing, the Board asked the applicant for a description of the operations necessary on Sundays at the site; and

WHEREAS, the applicant responded that only a very limited staff of three or four employees would be required on Sundays to submit the electronic manifest and to aid the cargo deliveries; and

WHEREAS, the applicant initially suggested having just one truck making a number of return trips from the airport, with cargo; and

WHEREAS, at the Board's suggestion to shorten the requested Sunday hours of operation and thus minimize any impact, the applicant modified the operation plan so that there would be two trucks making return trips, with only one on the site at a time; and

WHEREAS, the applicant represents that the time period of 10:30 A.M. to 6:00 P.M., Sundays, is necessary to accommodate potential flight delays, but that the hours of activity on the site will likely be shorter; and

WHEREAS, the applicant represents that there are fewer residences in the area around the site since the original Board grant and that the potential impact of the additional hours of operation therefore has been minimized; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested amendment.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on January 30, 1996 so that as amended this portion of the resolution shall read: “to permit a change in hours of operation to include 10:30 A.M. to 6:00 P.M., Sundays; *on condition:*

THAT the hours of operation shall be limited to 8:00 A.M. to 6:00 P.M., weekdays; 8:00 A.M. to 4:00 P.M., Saturdays; and 10:30 A.M. to 6:00 P.M., Sundays;

THAT there shall be a maximum of two trucks, not to exceed 24 ft. in length, operating from the site on Sundays;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all site lighting shall be directed downward and away from any adjacent residences;

THAT street trees and landscaping shall be planted and maintained in accordance with BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived or modified by the Board remain in effect;

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THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 402053219)

Adopted by the Board of Standards and Appeals, April 25, 2006.

7-95-BZ

APPLICANT – Francis R. Angelino, Esq., c/o DeCampo, for Redmont Realty Company, LLC, owner; Town Sports International, Inc., lessee.

SUBJECT – Application September 13, 2005 – Reopening for an extension of term and an amendment of a previously granted variance to permit, in a C1-2(R3-2)/R3-2 district, a physical culture establishment (health club) in a cellar and two-story building within a larger shopping center development, which does not conform to district use regulations.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT:

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening for an amendment, an extension of term of a variance, and approval of a new operator for a physical culture establishment (PCE); and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, and then to decision on April 25, 2006; and

WHEREAS, the subject site is located on the Cross Island Parkway, west of Cryders Lane; and

WHEREAS, on August 8, 1995, the Board granted a variance application under the subject calendar number to permit in a C1-2 (R3-2) zoning district, a PCE in a two-story building, which is a part of a larger shopping center development; and

WHEREAS, the term of the variance expired on August 8, 2005; and

WHEREAS, the operator of the PCE has also changed; and

WHEREAS, the Department of Investigation has performed a background check on the new corporate owner and operator of the PCE and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the applicant has also made minor reconfigurations to the interior space at the cellar, first, and second floors and has added exterior signage, all of which the Board finds acceptable; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested amendments and extension of term.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on August 8, 1995, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on August 8, 2015, to approve the change in the operator of the PCE, and to approve minor interior reconfigurations; *on condition* that all work substantially conforms to drawings filed with this application, marked ‘Received April 4, 2006’–(4) sheets and *on further condition*:

THAT the term of this grant shall be for ten years from the expiration of the prior grant, expiring on August 8, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to weekdays, 5:30 A.M. to 11:00 P.M. and weekends, 8:00 A.M. to 10:00 P.M.;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, April 25, 2006.

165-02-BZ thru 190-02-BZ

APPLICANT – Stuart A. Klein, Esq., / Steve Sinacori, Esq., for Park Side Estates, LLC, owner.

SUBJECT – Application March 31, 2005 – Reopening for an amendment to BSA resolution granted under calendar

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numbers 167-02-BZ, 169-02-BZ, 171-02-BZ, 173-02-BZ and 175-02-BZ. The application seeks to add 5 residential units to the overall development (encompassing lots 21 and 28) for a total of 37, increase the maximum wall height by 2'-0", and increase the number of underground parking spaces from 11 to 20, while remaining compliant with the FAR granted under the original variance, located in an M1-1 zoning district.

PREMISES AFFECTED – 143-147 Classon Avenue, a/k/a 380-388 Park Avenue and 149-159 Classon Avenue, southeast corner of Park and Classon Avenues, Block 1896, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Steven Sinacori.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to an existing Board variance; and

WHEREAS, the original grant was made on July 15, 2003, and permitted the construction of a five-story, Use Group 2 residential building in an M1-1 zoning district, with a Floor Area Ratio (FAR) of 3.08, a height of 55'-0", 32 dwelling units, and 11 accessory parking spaces; and

WHEREAS, the applicant proposes to maintain the approved building height and FAR, but increase the unit count to 37 units, and the amount of parking spaces to 18, all in the context of a redesign of the approved building that would include creation of a new subcellar in addition to the previously approved cellar, the relocation of the parking from the rear of the building to below grade in the subcellar, creation of dormers at the fifth floor setback, and the separation of the two building parts with an 8 ft. yard; and

WHEREAS, upon initial application, the applicant proposed to increase the height of the building to 57'-0", the total units to 37, and the number of parking spaces to 20, while decreasing the FAR to 3.04 through Quality Housing deductions; and

WHEREAS, however, after the Board expressed concerns about this proposal, particularly the increase in height and the Quality Housing deductions, the applicant ultimately modified the proposal to the current version, which reflects the same height as originally approved and does not include the Quality Housing deductions; and

WHEREAS, a public hearing was held on this application on October 18, 2005 after due notice by publication in *The City Record*, with continued hearings on March 14, 2006, and then to April 25, 2006 for decision; and

WHEREAS, Community Board 2, Brooklyn, did not issue a recommendation as to this proposal; and

WHEREAS, Council Member James and the Central Jewish Council support this proposal; and

WHEREAS, the site and surrounding area had a site and

neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, the applicant states that the proposed increase in units and increase in parking will not affect the Board's prior grant in terms of FAR, and that the proposed redesign will create a more aesthetically pleasing building; and

WHEREAS, the applicant also states that the proposal now includes a subcellar because during excavation it was discovered that poor soil had to be removed to an unanticipated depth, which left space for an additional below-grade level; and

WHEREAS, during the hearing process, the Board asked the applicant for additional information concerning the character of the neighborhood surrounding the site; and

WHEREAS, the applicant submitted a response that states that the area is a mix of residential, community facility, and commercial and manufacturing uses, within R6, C1-3, M1-1 and M1-2 zoning districts; and

WHEREAS, the applicant notes that the site is adjacent to an approximately 75,000 sq. ft. playground, beyond which is a seven story school building; and

WHEREAS, the applicant also cites to community facility uses within three blocks of the site, as well as multiple dwellings across the street; and

WHEREAS, as to bulk, the applicant cites to six to eight story buildings within 900 ft. of the site, five and six story buildings four blocks to the East, and six story residences on nearby Skillman Street; and

WHEREAS, the Board has reviewed this submission and finds that the proposed building is compatible in terms of use and bulk with the surrounding conditions; and

WHEREAS, finally, the Board notes that the applicant is proposing mechanical deductions for floor area; the Board is not approving said deductions through this grant, and they must be approved by the Department of Buildings; and

WHEREAS, based upon the above, the Board finds that the proposed amendment is appropriate to grant, with conditions as specified below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on July 15, 2003, so that as amended this portion of the resolution shall read: "to permit an increase in the amount of units and accessory parking spaces, as well as a redesign of the proposed building; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application, marked 'Received March 30, 2006'-(22) sheets and *on further condition*:

THAT a new certificate of occupancy shall be obtained within four years from the date of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the proposed work authorized by this grant, to be filed at the Department of Buildings under DOB Job No. 301862410, can not be professionally certified;

THAT DOB shall conduct a full plan examination of any permit application filed for the proposed work, including, but not limited to, a review and approval of FAR calculations and

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all floor area deductions;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.
(DOB Application No. 301862410)

Adopted by the Board of Standards and Appeals, April 25, 2006.

265-59-BZ

APPLICANT – Martyn & Don Weston, for 11 College Place, Inc., owner.

SUBJECT – Application December 12, 2005 – Extension of term for a variance to permit an eight car garage located in a residential building. The premise is located in an R7-1/LH-1 zoning district.

PREMISES AFFECTED – 11 College Place, west side 89'-6" north of Love Lane, Block 236, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Pamela Weston.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to May 9, 2006, at 10 A.M., for decision, hearing closed.

1888-61-BZ

APPLICANT – Alfonso Duarte, for Ali Amanolahi, owner.

SUBJECT – Application June 21, 2005 – Pursuant to Z.R. §11-412 for an Amendment to an eating and drinking establishment and catering hall for the further increase in floor area and the to legalize the existing increase in floor area, the separate entrance to the catering hall and the drive thru at the front entrance. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 93-10 23rd Avenue, southwest corner of 94th Street, Block 1087, Lot 1, Elmhurst, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Laid over to June 13, 2006, at 10 A.M., for continued hearing.

374-71-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Evelyn DiBenedetto, owner; Star Toyota, lessee.

SUBJECT – Application February 12, 2004 – Pursuant to Z.R. §§72-01 and 72-22 for an extension of term of a variance permitting an automobile showroom with open display of new and used cars (UG16) in a C2-2 (R3-2) district. The application also seeks an amendment to permit accessory customer and employee parking in the previously unused vacant portion of the premises.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 6269, Lots 14 and 20, located on the North West corner of Northern Boulevard and the Clearview Expressway, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Steven Sinacori.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

357-72-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Permanent Mission of the Russian Federation to the U.N., owner.

SUBJECT – Application December 19, 2005 – Amendment to a previously granted Variance ZR 72-21 for a multiple dwelling and community facility complex to allow for the enclosure of an existing swimming pool and the enlargement of an accessory health and sports facility. The premise is located in an R-4 zoning district.

PREMISES AFFECTED – 355 West 255th Street, northwest corner of West 255th Street and Fieldston Road, Block 5846, 5848, Lots 1605, 1774, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 10:00 A.M., for decision, hearing closed.

1233-88-A

APPLICANT – Richard Bowers of Stadtmauer Bailkin, LLP, for Sunrise Development, owner.

SUBJECT – Application February 22, 2006 – Extension of Time/Waiver to complete construction of a five-story (with basement) residential building of senior housing (Sunrise) for an additional twenty four months which expired on October 29, 2005. The premise is located in an R3-1 (Hillside Preservation District).

PREMISES AFFECTED – 801 Narrows Road North, north side of Narrows Road, 1162.62' east of Howard Avenue, Block 631, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Richard Bowers.

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THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to May 9,
2006, at 10 A.M., for decision, hearing closed.

43-99-BZ

APPLICANT – Windels Marx Lane and MittenDorf, LLP,
for White Castle Systems, Inc., owner.

SUBJECT – Application November 22, 2005 – Extension of
Term/Waiver/Amendment to a previously granted special
permit for a drive-through facility accessory to an eating and
drinking establishment for an additional term of five years.
The amendment is to install and electronic amplification
menu board. The premise is located in a C1-2 in an R-4
zoning district.

PREMISES AFFECTED – 38-02 Northern Boulevard,
southwest corner formed by the intersection of Northern
Boulevard, Block 1436, Lot 1, Flushing, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Jeanine Margiano and Oliver Eichorn.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to May 16,
2006, at 10 A.M., for decision, hearing closed.

143-05-A

APPLICANT – Eric Palatnik, P.C., for Andrew Latos &
Peter Latos, owners.

SUBJECT – Application February 15, 2006 – Extension of
Time to complete construction and to obtain a Certificate of
Occupancy. On November 29, 2005 BSA granted issued a
resolution determining that the owner of the premises had
obtained a vested right to continue construction under DOB
permit No. 4021124879 and reinstated the permit for a period
of six months to expire on May 29, 2006. The premise is
located in a R2A zoning district.

PREMISES AFFECTED – 47-05 Bell Boulevard, between
47th and 48th Avenues, Block 7346, Lot 49, Borough of
Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to May 16,
2006, at 10 A.M., for decision, hearing closed.

149-05-A

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas,
owner.

SUBJECT – Application February 21, 2006 – Extension of
Time to complete construction and to obtain a Certificate of
Occupancy. On November 1, 2005 BSA issued a resolution
determining that the owner of the premises had obtained a
vested right to continue construction under DOB permit No.
401867618 and reinstated the permit for a period of six
months to expire on May 1, 2006. The premise is located in
an R2A zoning district.

PREMISES AFFECTED – 32-29 211th Street, east corner of
32nd Avenue and 211th Street, Block 6061, Lot 10, Borough
of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 16,
2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

92-05-A

APPLICANT – Sheldon Lobel, P.C., for Patrick & Susan
Kim, owner.

SUBJECT – Application April 15, 2005 – Proposed
enlargement of an existing one family dwelling, not fronting
on mapped street, is contrary to Section 36, Article 3 of the
General City Law.

PREMISES AFFECTED – 43-36 Cornell Lane, westerly side
of Cornell Lane, north of Northern Boulevard, Block 8129,
Lot 154, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Zara Fernandes.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated March 10, 2005, acting on Department of
Buildings Application No. 401861963, reads:

“Map 11A does not show the location of Property. Verify and
comply with General City Law 36.”; and

WHEREAS, a public hearing was held on this application
on April 11, 2006 after due notice by publication in the *City*

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Record, and then to closure and decision on April 25, 2006; and

WHEREAS, by letter dated March 16, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 10, 2005, acting on Department of Buildings Application No. 401861963, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 17, 2006" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 25, 2006.

155-05-A

APPLICANT – Richard Kusack, neighbor; 81 East Third Street Realty, LLC., owner.

SUBJECT – Application June 30, 2005 – For an appeal of the Department of Buildings decision dated May 27, 2005 rescinding its Notice of Intent to revoke the approvals and permit for Application No. 102579354 for a community facility (New York Law School) in that it allows violations of the Zoning Resolution and Building Code regarding bulk, light, air, and unpermitted obstructions in rear yards.

PREMISES AFFECTED – 81 East 3rd Street, Manhattan, Block 445, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins..... 4

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Manhattan Borough

Commissioner, dated May 27, 2005 (the "Final Determination"); and

WHEREAS, the Final Determination was issued in response to a January 27, 2005 request from the appellant, asking that the Department of Buildings ("DOB") cancel the rescission of a 10-day notice to revoke the permit (Application No. 102579354, hereinafter, the "Permit") issued for construction of a 13-story Use Group ("UG") 3 school dormitory building (the "Building") at the subject premises; and

WHEREAS, as reflected in the Final Determination, the Manhattan Borough Commissioner denied this request because all outstanding zoning issues had been resolved and there was no basis to revoke the permits; and

WHEREAS, a public hearing was held on this application on December 6, 2005 after due notice by publication in *The City Record*, with a continued hearing on January 24, 2006, March 14, 2006, March 28, 2006, and then to decision on April 25, 2006; and

WHEREAS, Community Board 3, Manhattan, submitted testimony in support of the appeal and the request to revoke the permits, citing concerns about adherence to zoning regulations; and

WHEREAS, the Greenwich Village Society for Historic Preservation submitted testimony citing the same concerns; and

WHEREAS, the Building is located on the north side of East Third Street, between First and Second Avenues, in an R7-2 zoning district; and

WHEREAS, on March 21, 2001, DOB approved a new building permit application (Application No. 102579354) to construct a seven-story residential building; and

WHEREAS, before any permit was issued, the Building was sold to the current owner who, on October 18, 2002, applied to amend the permit application to construct six stories of UG 2 residential use and six stories of UG 3 student dormitory use, and one story for mechanical equipment and accessory use; this application was approved on November 7, 2002, but no permit was pulled at that time; and

WHEREAS, on May 13, 2003, the owner filed a professionally certified new building application (Application No. 103454717) to construct a seven-story building with medical offices on the first floor and residential uses above; a permit was issued on May 15, 2003 and construction was begun; and

WHEREAS, on June 28, 2004, the Permit was issued, under Application No. 102579354 (the "Final Application"), to construct a 13-story building with six student dormitory floors; and

WHEREAS, in October 2004, in response to a complaint, the DOB determined that the Final Application lacked evidence of institutional control over the six student dormitory floors, and issued a ten-day notice of intent to revoke the permit; and

WHEREAS, the owner documented its plan to comply with DOB's requirements, submitted a draft restrictive declaration, and requested a 45-day extension to the October 20, 2004 notice of intent to revoke; and

WHEREAS, upon completing another audit of the

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application, the DOB notified the owner that the restrictive declaration was not acceptable and issued another ten-day letter of intent to revoke the approvals and permits based upon zoning, Multiple Dwelling Law, and Building Code objections; and

WHEREAS, the owner again responded to DOB's objections and, on May 5, 2005, DOB accepted revised plans reflecting the needed revisions (additional revisions showing new fenestration were filed on May 25, 2005); and

WHEREAS, additionally, on May 24, 2005, the owner submitted a copy of a lease for a ten-year term with New York Law School, and a restrictive declaration, which required UG 3 school dormitory occupancy on the first seven floors and portions of the eighth floor, was subsequently recorded; and

WHEREAS, on May 27, 2005, DOB rescinded its intent to revoke the approvals and permits, and ultimately issued a final certificate of occupancy on August 30, 2005; and

WHEREAS, the appellant now challenges DOB's rescission of its intent to revoke the Permit, based upon the following arguments: (1) the Building as occupied does not satisfy DOB's requirements for a student dormitory; and (2) the Building is not in compliance with certain zoning requirements: open space ratio (ZR §§ 12-10 and 23-142) and rear yard obstructions (ZR § 22-33(b)); and

WHEREAS, as to the first argument, the appellant contends that DOB has "arbitrarily" allowed a "speculative" community facility dormitory contrary to zoning; and

WHEREAS, further, the appellant questions DOB's ability to enforce the restrictive declaration regarding the dormitory use; and

WHEREAS, DOB disputes the appellant's claims, stating in response to the first that it issued its Final Determination only after the owner submitted a copy of an executed ten-year lease (with an option to renew for another ten-year term) with New York Law School, a recognized educational institution, as well as an executed and recorded restrictive declaration that restricts the use of the first seven above-grade floors and part of the eighth floor to UG 3 student dormitory use, as part of the amended Final Application; and

WHEREAS, DOB notes that evidence of institutional control is required, and states that it notified the owner that the permit issued under the Final Application would be revoked if proper documentation of institutional control was not presented; and

WHEREAS, as to the appellant's concern about the enforceability of the restrictive declaration, the DOB states that it was filed as a condition for the issuance of the certificate of occupancy and that there is a provision that the agreement may not be modified without DOB's consent; DOB notes that this is a standard clause in declarations submitted to satisfy a regulatory requirement; and

WHEREAS, on June 20, 2005, subsequent to the Final Determination, the DOB effectuated a rule, 1 RCNY 51-01, (the "Rule") concerning the classification of a student dormitory; DOB notes that since the Rule was not effective as of the date of the Final Determination, it is not a relevant consideration in the instant appeal; and

WHEREAS, the Board agrees with DOB that the objection about the institutional nexus concern was resolved when the owner submitted an executed lease with New York Law School and a restrictive declaration, and further notes that New York Law School now occupies the building with a UG 3 student dormitory, which the appellant does not dispute; and

WHEREAS, the Board further agrees that the subsequent enactment of the Rule concerning student dormitory classification should not be applied retroactively, and that it is therefore not relevant to the subject appeal; and

WHEREAS, the Board finds that DOB was within its discretion at the time the determination was made to accept a ten-year lease as sufficient proof of the necessary institutional nexus for a UG 3 student dormitory classification; and

WHEREAS, the appellant made a further argument that the lease contained an optional termination provision after five years; and

WHEREAS, the appellant argues that there is no lawful basis for the proposition that a five-year lease would be sufficient to establish an institutional nexus to develop a school dormitory; and

WHEREAS, DOB responded that prior to the enactment of the Rule, it accepted lease periods of less than ten years and leases with five-year termination provisions; and

WHEREAS, again, the Board does not find the appellant's argument persuasive, since it is clear that the Rule, and the provisions therein, should not be applied retroactively; and

WHEREAS, accordingly, the Board finds that appellant's first argument is without merit; and

WHEREAS, as to the second argument concerning purported zoning requirement deficiencies, the appellant contends that there is an insufficient amount of open space at the rear of the Building, as required as defined by ZR § 23-142, because the residential occupants apparently could not access the open space and

WHEREAS, DOB responds by pointing out that the revised plans clearly designate the residential tenants' means of access to the required open space through the cellar; and

WHEREAS, secondly, the appellant argues that the curb-level west and east terraces do not contribute to open space, pursuant to ZR § 12-10, because the terraces are less than 25 feet in width; and

WHEREAS, DOB responds that the 25-foot width requirement under ZR § 12-10 applies to open space that is on an above-grade roof and is not relevant to space at curb level for which there is no minimum dimension required; and

WHEREAS, again, the Board agrees with DOB, for the reason given, and notes that the revised plans reflect the required access; and

WHEREAS, accordingly, the Board finds that appellant's arguments concerning the open space requirement is without merit; and

WHEREAS, subsequent to the first hearing on the matter, the appellant submitted supplemental arguments concerning the open space, permitted obstructions, and the

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right to vest; and

WHEREAS, the appellant argued that the open space is not wheelchair-accessible because it appears only to be accessible through a stairwell; and

WHEREAS, DOB responds that the owner has agreed to include an accessible chair on the stairs to provide accessibility between the two levels of public space, and that this is a permitted obstruction pursuant to ZR §§ 23-44 (which allows steps for handicapped access) and 24-33(b) (which allows steps as a permitted obstruction); and

WHEREAS, the Board agrees with DOB that the stairwell, as modified, provides lawful wheelchair access to the entirety of the open space; and

WHEREAS, the appellant also argues that the Building violates ZR § 24-33(b)(3), amended on September 9, 2004 (the "Amendment"), because a dormitory use is not a permitted rear yard obstruction; and

WHEREAS, DOB responds by noting that the Building is not subject to this provision because the owner vested prior its enactment by completing the foundation in February 2004; and

WHEREAS, the appellant argues that the Building did not vest prior to the Amendment because the foundation was constructed under a prior permit for a residential building that did not include a dormitory and that that use did not comply with the law in effect at the time of construction; and

WHEREAS, the appellant contends that since a residential use is not a permitted obstruction, the vesting cannot be applied to the Building with its dormitory use; and

WHEREAS, DOB observes that the plans approved at the time construction began included community facility use in the rear yard and that this was permitted prior to the adoption of the Amendment, when the Building vested; and

WHEREAS, DOB further observes that sleeping accommodations were not approved in the rear yard obstruction as they were not permitted pursuant to ZR § 24-33(b)(1), before or after the Amendment's adoption; and

WHEREAS, the Board agrees with DOB as to appellant's vesting argument, and notes that prior to the Amendment, the owner had completed construction on a substantial portion of the Building, including the community facility portion in the rear yard, and that work was performed under a valid building permit that was never revoked; and

WHEREAS, the owner of the subject premises also observes that the recreation space is in the cellar, which is below-grade, and because the rear yard starts at grade, the rear yard obstruction provisions have no applicability to the recreation space; and

WHEREAS, accordingly, the Board finds that all of the appellant's arguments are without merit.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated May 27, 2005, refusing to cancel the rescission of the notice of revocation as to the Final Application, is hereby denied.

Adopted by the Board of Standards and Appeals, April 25, 2006.

374-05-BZY thru 399-05-BZY

APPLICANT – Eric Palatnik, P.C., for Carmel Homes LLC, owner.

SUBJECT – Application December 27, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R3-2 Zoning District. Current R3-X Zoning District.

PREMISES AFFECTED – Riga Street, Carmela Court, Mill Road, Block 4690, Lots Nos. 130-135, 135-139, 126-129, 120-125, 110-115, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of certificates of occupancy for, 26 townhouses currently under construction at the subject premises; and

WHEREAS, the Board notes that while separate applications were filed for each permit for each of the townhouses, in the interest of convenience, it heard the cases together and the record is the same for all the applications; and

WHEREAS, a public hearing was held on this application on April 11, 2005 after due notice by publication in The City Record, and then to decision on April 25, 2006; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, the Oakwood Civic Association raised concerns about the development's impact on flooding in the area; and

WHEREAS, the Board notes that all Building Code and other legal requirements must be met, including those concerning drainage, as enforced by the Department of Environmental Protection (DEP); and

WHEREAS, additionally, in response to the opposition's concern about the flooding conditions, the applicant stated that DEP had examined the issue before granting permits; and

WHEREAS, the subject premises are five separate groups of four to six townhouses, all bound by Mill Road, Aviston Street, and Riga Street; and

WHEREAS, the premises are currently located within an R3-X zoning district, but were formerly located within an R3-2 zoning district; and

WHEREAS, the development complies with the former R3-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on December 3, 2003 (hereinafter, the "Enactment Date"), the City Council voted to adopt the

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rezoning of the area, which rezoned the sites to R3-X; and

WHEREAS, as of that date, foundation construction had been completed, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain certificates of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 et seq., which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed enlargement, which involves the construction of two or more buildings on contiguous zoning lots, as a "minor development"; and

WHEREAS, for "minor development," an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective dater of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permits, and renewals, for the proposed development were lawfully issued to the owner by DOB, prior to the Enactment

Date: Permit Nos. 500592539-01-NB, 500592548-01-NB, 500592557-01-NB, 500592566-01-NB, 500592575-01-NB, 500592584-01-NB, 500592593-01-NB, 500592600-01-NB, 500592619-01-NB, 500592628-01-NB, 500592637-01-NB, 500592646-01-NB, 500592655-01-NB, 500592664-01-NB, 500592726-01-NB, 500592717-01-NB, 500592708-01-NB, 500592691-01-NB, 500592682-01-NB, 500592673-01-NB, 500592780-01-NB, 500592771-01-NB, 500592762-01-NB, 500592753-01-NB, 500592744-01-NB, and 500592735-01-NB (hereinafter, the "New Building Permits"); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises on the referenced date, prior to the Enactment Date; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in its written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed townhouse developments subsequent to the issuance of the New Building Permits resulted in full townhouse completion in some cases, and 27 percent completion in others; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: photographs of each lot showing the amount of work completed, ranging from partial framing at the least to total completion; building plans, stamped and sealed by the architect, indicating the amount of work completed; and copies of contracts, work orders, invoices, and cancelled checks; and

WHEREAS, the submitted plans, stamped and signed by the architect of record, indicating the extent of completion, corroborate the applicant's statements as to the scope of work; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid New Building Permits; and

WHEREAS, the applicant represents that the following work remains to be done: some interior work throughout the development, and building construction at addresses 15 thru 25 Carmela Court and 589 thru 599 Mill Road; and

WHEREAS, thus, taken as a whole, the applicant asserts that construction of the five groups of townhouses was 69.26 percent complete as of December 3, 2005, with 32,564 square

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feet improved and 10,014 square feet remaining to be improved; and

WHEREAS, the Board notes that the actual completion of physical construction is substantial in of itself, in that it resulted in tangible above-grade construction; and

WHEREAS, as to costs, the applicant represents that the total value of the construction already completed is \$1,707,129.00 while the total project cost is \$2,464,800.00 (69 percent completion); the estimated financial expenditures actually paid are \$1,462,975.69 (59 percent paid); in support of this claim, the applicant has submitted invoices and cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the New Building Permits; therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site the requested two-year extension for completion of construction that is allowed under ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR §11-332 to renew New Building Permits Nos. 500592539-01-NB, 500592548-01-NB, 500592557-01-NB, 500592566-01-NB, 500592575-01-NB, 500592584-01-NB, 500592593-01-NB, 500592600-01-NB, 500592619-01-NB, 500592628-01-NB, 500592637-01-NB, 500592646-01-NB, 500592655-01-NB, 500592664-01-NB, 500592726-01-NB, 500592717-01-NB, 500592708-01-NB, 500592691-01-NB, 500592682-01-NB, 500592673-01-NB, 500592780-01-NB, 500592771-01-NB, 500592762-01-NB, 500592753-01-NB, 500592744-01-NB, and 500592735-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed townhouse developments for one term of two years from the date of this resolution, to expire on April 25, 2008.

Adopted by the Board of Standards and Appeals, April 25, 2006.

263-03-A

APPLICANT – John W. Carroll, Wolfson & Carroll, for Ben Bobker, owner.

SUBJECT – Application August 20, 2003 – An administrative appeal challenging the Department of Buildings' final determination dated August 13, 2003, in which the Department refused to revoke the certificate of occupancy, on the basis that the applicant had satisfied all objections regarding said premises.

PREMISES AFFECTED – 1638 Eighth Avenue, west side, 110-5' east of Prospect Avenue, Block 1112, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: John Carroll and Lawrence Einstein.

For Opposition: Michael J. Schweinsburg of Office of Councilwoman Gonzalez, and Deirdre Carson.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for decision, hearing closed.

317-05-A

APPLICANT – Kevin Shea, applicant; Woodcutters Realty Corp. Owner; Three on Third LLC, lessee.

SUBJECT – Application November 1, 2005 – Appeal challenging DOB's interpretation of various provisions of the Zoning Resolution relating to the construction of a 16 story mixed use building in an C6-1/R7-2 Zoning district, which violates Zoning Floor Area exclusions, height and setback, open space and use regulations.

PREMISES AFFECTED – 4 East 3rd Street, South east corner of East Third and the Bowery, Block 458, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for continued hearing.

353-05-BZY

APPLICANT – Cozen & O'Connor for Emet Veshlom Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

For Opposition: Michael J. Schweinsburg of Office of Councilwoman Gonzalez, Aaron Brashear, Anne Marie Surfuro-Boehme, Yic Holwin and Monica Staleia.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 6,
2006, at 10 A.M., for decision, hearing closed.

354-05-BZY

APPLICANT – Cozen & O'Connor for Global Development,
LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed
extension of time to complete construction of a minor
development pursuant to Z.R. 11-331 for a 62 unit 11 story
multiple dwelling under the prior Zoning R6. New Zoning
District is R6B/ C2-3 as of November 16, 2005.

PREMISES AFFECTED – 182 15th Street, Brooklyn, south
side of 15th Street, 320 feet west of 5th Avenue, Block 1047,
Lot 22 Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

For Opposition: Michael J. Schweinsburg of Office of
Councilwoman Gonzalez, Hannibal Galin, Jane Cypher, Bo
Samjopoulos, Joe Levine, and Jay Zeid.

For Administration: Janine Garland, Department of
Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 13,
2006, at 10 A.M., for decision, hearing closed.

361-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Prospect
Terrace LLC, owner.

SUBJECT – December 19, 2005 – Proposed extension of
time to complete construction of a minor development
pursuant to Z.R. §11-331 under the prior R5 zoning district.
Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on
8th Avenue between Prospect Avenue and Windsor Place,
Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: Michael J. Schweinsburg of Office of
Councilwoman Gonzalez, John W. Carroll, Lawrence
Einstein, Mary Lakaszawski, Ann Schaetzel, Scott Neumann,
Marie Ann Patrissi, Margaret Lakaszawski, Josh Erman,
Lilian West, Rosalie Keenan, Anna M. Gargiuto, Phyllis
Lawless and Peter Brown.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to June 20,
2006, at 10 A.M., for continued hearing.

366-05-A

APPLICANT – Greenberg & Traurig, LLP for Prospect
Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – An appeal
seeking a determination that the owner of said premises has
acquired a common law vested rights to continue
development commenced under the prior R5 zoning district.
Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on
8th Avenue between Prospect Avenue and Windsor Place,
Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

For Applicant: Deirdre Carson.

For Opposition: Michael J. Schweinsburg of Office of
Councilwoman Gonzalez, John W. Carroll, Lawrence
Einstein, Mary Lakaszawski, Ann Schaetzel, Scott Neumann,
Marie Ann Patrissi, Margaret Lakaszawski, Josh Erman,
Lilian West, Rosalie Keenan, Anna M. Gargiuto, Phyllis
Lawless and Peter Brown.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to June 20,
2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: 2:20 P.M.

REGULAR MEETING TUESDAY AFTERNOON, APRIL 25, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

160-04-BZ/161-04-A

APPLICANT – Mitchell S. Ross, Esq., Augusta & Ross, for
Daffna, LLC, owner.

SUBJECT – Application April 21, 2004 – Under Z.R. §72-21
to permit, in an M1-2 zoning district, the residential
conversion of an existing four-story commercial loft building
into eight dwelling units, contrary to Z.R. §42-10.

PREMISES AFFECTED – 73 Washington Avenue, East side

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of Washington Avenue 170' north of Park Avenue, Block 1875, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

Adopted by the Board of Standards and Appeals, April 25, 2006.

81-05-BZ

CEQR #05-BSA-117K

APPLICANT – Bryan Cave LLP (Margery Perlmutter, Esq.) for the Lyon Group, LLC, owner.

SUBJECT – Application April 5, 2005 – Under Z.R. §72-21 to construct a 7-story plus mezzanine residential building containing 39 dwelling units and 10 accessory parking spaces in an R6 district, contrary to Z.R. §§23-145, 23-632, 23-633, 25-23.

PREMISES AFFECTED – 1061/71 52nd Street, north side, 229' east of Fort Hamilton Parkway, Block 5653, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Margery Perlmutter.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 8, 2005, acting on Department of Buildings Application No. 301320372, reads, in pertinent part:

“[P]roposed residential FAR . . . does not comply (ZR 23-142 and 23-145)

[P]roposed lot coverage does not comply (ZR 23-145)

[S]treetwall [and] building height . . . does not comply (ZR 23-633)

[S]etback does not comply

[R]equired parking . . . does not comply (ZR 25-23)”;
and

WHEREAS, this is an application under ZR § 72-21, to

permit, on a site within an R6 zoning district, a six-story plus cellar residential building, with 31 dwelling units and ten accessory parking spaces, which does not comply with zoning provisions concerning residential Floor Area Ratio (FAR), lot coverage, street wall height, total building height, setback, and required parking, contrary to ZR §§ 23-142, 23-145, 23-633, and 25-23; and

WHEREAS, the applicant proposes to construct a six-story residential building with a cellar, with a total residential FAR of 4.08, a street wall height of 50.42 ft., a total height of 59.75 ft., lot coverage of 69.7 percent, one 15 ft. setback at 50.42 ft., no rear setback, and ten accessory parking spaces; and

WHEREAS, the proposed development will be based upon the Quality Housing zoning regulations set forth at Chapter 8, Article II of the ZR; and

WHEREAS, the applicant initially proposed to construct a seven story plus mezzanine, 79.33-foot high, 39-unit, 5.16 FAR residential building with ten parking spaces; and

WHEREAS, the Board expressed concern about this proposal, noting that there did not appear to be any justification for such significant FAR and height waivers, and also that the proposed building was too large for the character of the community and did not represent the minimum variance; and

WHEREAS, the applicant submitted two intermediate proposals, which were also determined by the Board to be too large; and

WHEREAS, the first intermediate proposal was a six-story plus mezzanine, 69.75 foot high, 33-unit, 4.48 FAR, residential building; and

WHEREAS, the second intermediate proposal was a six-story, 69.75-foot high, 33-unit, 4.53 FAR residential building, with a reduced mezzanine level set back 20 feet from the street line and 10 feet from the rear wall at that level; and

WHEREAS, however, the applicant presented the current version to the Board at the same time as the 4.53 FAR intermediate proposal; when the Board expressed a strong preference for it, since it was acceptable in terms of compatibility with the neighborhood and minimum variance, the applicant modified its proposal to the current version; and

WHEREAS, a public hearing was held on this application on November 1, 2005, after due notice by publication in the *City Record*, with continued hearings on January 10, 2006 and March 14, 2006, and then to decision on April 25, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application on condition that the building only rise to six stories; and

WHEREAS, the subject premises is located on the north side of 52nd Street, 229 feet east of Fort Hamilton Parkway, and is a vacant 12,020 sq. ft. interior lot with 120 feet of frontage on 52nd Street (a 60 foot wide narrow street); and

WHEREAS, the applicant states that the site was historically occupied by an automobile repair and storage

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garage, but has been vacant since 2002; and

WHEREAS, the applicant notes that a Quality Housing development of six three-family homes was originally proposed for the site around 2002, but then abandoned when soil problems were discovered; and

WHEREAS, subsequently, an as-of-right hospital facility was proposed, but the sponsoring hospital abandoned the project in the face of community opposition; and

WHEREAS, the proposed building has the following non-complying bulk and parking parameters, based upon the Quality Housing regulations: (1) a residential FAR of 4.08 (2.43 is the maximum permitted); lot coverage of 69.7 percent (60 percent is the maximum permitted); a street wall height of 50.42 ft. (45 ft. is the maximum permitted); a building height of 59.75 ft. (55 ft. is the maximum permitted); a 15 ft. front setback at 50.42 ft. and no rear setback (a 15 ft. front setback and a 10 ft. rear setback is required at 45 ft.); and ten accessory parking spaces (16 spaces are required); and

WHEREAS, the applicant states that approximately 0.38 of the residential FAR will be located below grade in the cellar, but will still count as zoning floor area as the space will be allocated to individual units rather than the building as a whole; and

WHEREAS, the applicant states that the following are unique physical conditions, which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site is burdened with unsatisfactory soil conditions that necessitate a deep pile foundation system; (2) the soil is contaminated, and requires remediation; and (3) there are numerous one-story garage structures located directly to the north of the site, which are in poor condition and rest on no or little foundation; and

WHEREAS, as to the soil conditions, the applicant states that soil boring tests were taken in 2001; and

WHEREAS, the results of the tests were compiled in a geotechnical report submitted to the Board; and

WHEREAS, this report states that the upper layer of soil is fill, followed by layers of peat, inconsistent clay, and then silty sand and gravel, which extends to the maximum depths drilled; and

WHEREAS, the report recommends the removal of the first three layers of soil; and

WHEREAS, the applicant submitted a further soil analysis, which corroborates the earlier report, and which recommends a deep pile foundation system; and

WHEREAS, in addition to a deep pile foundation system, the applicant also states that construction preparation costs will be increased, as the soil must first be stabilized by gravel fill in order to support construction equipment; and

WHEREAS, the applicant also represents that the soil condition is unique to the site; and

WHEREAS, in support of this representation, the second analysis contains a comparison of the site to four other properties in the area, which reveals that the other properties' soil profiles are significantly different and could support a shallow conventional foundation; and

WHEREAS, additionally, the applicant cites to the soil boring test logs of a nearby hospital development site, which also reveal soil with better bearing capacity than the subject site; and

WHEREAS, as to contamination, the applicant states that the prior automotive uses contaminated the site with gasoline, which likely leaked from pre-existing tanks; and

WHEREAS, the applicant has submitted a report from an environmental consultant, which states that Phase I and II testing revealed the presence of petroleum-based contamination, likely related to tank spillage, all of which was remediated in 2004; and

WHEREAS, finally, as to the adjacency of the garages to the rear, the applicant states that any attempt to excavate or underpin the surrounding soils or drive piles within 20 to 25 feet of these structures is likely to cause vibration or undermine the surrounding soils, which could result in damage to these structures; and

WHEREAS, the applicant states that this prevents the building and the cellar (which will contain residential floor area and mechanical space) from being built full to the rear lot line, as setting back the cellar avoids increased construction costs; and

WHEREAS, the applicant also states that the setting back of the building constrains the ability to put in the required amount of parking on the first floor, as not enough space exists to accommodate both Building Code-compliant ramps and the required number of spaces; and

WHEREAS, the Board has reviewed this claim and the evidence submitted in support of it, and agrees that this condition, when considered in conjunction with the premium costs created by the soil and contamination conditions, leads to increased construction costs; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenarios: (1) a 12-story, 4.8 FAR conforming community facility development; and (2) an 18-unit, 2.2 FAR conforming Quality Housing residential development; and

WHEREAS, the applicant initially concluded that these two as-of-right scenarios would result in a loss, due to the premium construction costs related to the above-stated unique physical conditions; and

WHEREAS, additionally, the applicant submitted a zoning and bulk study of an as-of-right height-factor residential development, with an FAR of 2.38; the applicant explained that 32 percent of the site would have to be devoted to open space, resulting in a building floor plate of 2,858 sq. ft., which would be costly to develop, and which would result in small unmarketable units due to the loss of usable floor area accorded to stairs and elevator cores; and

WHEREAS, as to the zoning and bulk study for as-of-

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right height-factor development, the Board agrees that the constraints of the site would prevent viable development; and

WHEREAS, however, the Board had concerns regarding certain aspects of the feasibility study common to the analyses of the two complying scenarios (as well as the lesser variance scenarios, discussed below), and identified them at hearing; and

WHEREAS, specifically, the Board questioned: (1) the significant amount of unexplained “carrying” costs and “holding and preparation” costs, ascribed to overall construction costs; and (2) the claimed sell-out prices of the condominium units, which the Board felt were too low; and

WHEREAS, in a subsequent submission, the applicant attempted to address these concerns, but the Board was not persuaded that the submission was adequate; and

WHEREAS, specifically, the Board noted that the carrying costs were described by the applicant to be related to “time constraints” without further explanation, and the holding costs were stated by the applicant to be related to the prior, failed community facility development; and

WHEREAS, accordingly, the Board expressed concern about the legitimacy of folding either of these costs into the feasibility analysis; and

WHEREAS, as to the condominium prices, the Board noted that while the applicant increased them, no evidence in support of the increase was presented; and

WHEREAS, however, the Board concluded that even if appropriate adjustments were made in response to each of these issues, neither of the complying scenarios analyzed by the applicant would result in a reasonable return; and

WHEREAS, thus, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the building would be consistent with the built conditions in the surrounding area in terms of bulk and height, and

WHEREAS, specifically, the applicant notes that there is a large four story school building (79.26 ft. above curb level) to the west of the site, and that there are six story apartment buildings (68.3 ft. above curb level) to the north; and

WHEREAS, the applicant states that the proposed building would rise to a height above curb level of approximately 59 ft., not including bulkheads, which is less than the school building and the apartment buildings; and

WHEREAS, the Board agrees that the proposed height of the building, in terms of visible impact, is compatible with the adjacent built conditions; and

WHEREAS, the applicant also submitted a study that showed that mid-block sites in the subject R6 zoning district have been developed with a significant number of six story

and taller buildings; and

WHEREAS, the Board agrees that this evidence supports the contention that the proposed building is compatible with the broader context of midblock development within the R6 zoning district and the subject neighborhood; and

WHEREAS, additionally, the Board also notes that the proposed street wall height, setback and overall height only minimally exceed what is permitted by the Quality Housing regulations, and would actually comply with what would be permitted under height-factor regulations; and

WHEREAS, thus, the Board concludes that the proposed development fits within the with the bulk envelope anticipated for multiple dwelling development in the subject R6 zoning district; and

WHEREAS, further, as noted above, not all of the 4.08 FAR will be located above grade such that it will be visible; 0.38 of the FAR is located below grade, further minimizing the impact of the bulk; and

WHEREAS, based upon the above, the Board agrees that the proposed building’s height and FAR are consistent with other buildings in the neighborhood; and

WHEREAS, as to parking, the applicant notes that it conducted a survey of on-street demand within 400 ft. of the site, which showed that during the midday peak period of parking demand, eight non-metered spaces were available within 400 ft., and an additional 17 spaces were available one block beyond the 400 ft. study area; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, in addition to the analyses of the conforming scenarios, the applicant also submitted analyses of the lesser variance scenarios described above (including the proposal), as well as a five-story, 25-unit, 3.5 FAR, conforming Quality Housing residential development, which complied with street wall and building height parameters; and

WHEREAS, the applicant initially concluded that none of these scenarios would realize a reasonable return, due to the significant premium construction costs and the extended construction period; and

WHEREAS, however, the feasibility analysis for these scenarios contained the same flaws identified above, namely the improper inclusion of excessive holding and carrying costs and the low condominium sell-out values; and

WHEREAS, the Board suggested to the applicant that these problems skewed any analysis of the lesser-variance scenarios in terms of return, and that the proposed 4.08 FAR building represented the minimum variance; and

WHEREAS, accordingly, after accepting guidance from the Board as to the amount of bulk waiver necessary to overcome the stated hardship costs, as well as to the need to reduce the building’s bulk in order to minimize impact on the character of the community, the applicant amended the proposal

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to the current version, which the Board finds to be the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA117K, dated September 26, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6 zoning district, a six-story plus cellar residential building, with 31 dwelling units and ten accessory parking spaces, which does not comply with applicable zoning provisions concerning residential Floor Area Ratio, lot coverage, street wall height, total building height, setback, and required parking, contrary to ZR §§ 23-142, 23-145, 23-633, and 25-23, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 25, 2006” – two (2) sheets and “Received March 21, 2006” – eleven (11) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: six stories plus a cellar, a residential FAR of 4.08; lot coverage of 69.7 percent; a street wall height of 50.42 ft; a building height of 59.75 ft.; a 15 ft. front setback at 50.42 ft. and no rear setback; and ten accessory parking spaces;

THAT all Quality Housing regulations not waived or

modified by the Board shall be complied with, as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 25, 2006.

187-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Salvatore Porretta and Vincenza Porretto, owners.

SUBJECT – Application August 9, 2005 – Under Z.R. §72-21– Propose to build a two family dwelling that will comply with all zoning requirements with the exception of two non-complying side yards and undersized lot area due to a pre-existing condition.

PREMISES AFFECTED – 78-20 67th Road, Southerly side of 67th Road, 170’ easterly of 78th Street, Block 3777, Lot 17, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 3, 2005, acting on Department of Buildings Application No. 402168845, reads:

- “1. Proposed side yard is contrary to Section 23-461(a) of the Zoning Resolution.
2. Proposed floor area is contrary to section 23-141 of the Zoning Resolution. As per zoning changes from R5 to R4-1”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R4-1 zoning district, the proposed construction of a two-story plus attic, two-family home, that does not comply with applicable side yard and Floor Area Ratio requirements, contrary to Z.R. §§ 23-461(a) and 23-141; and

WHEREAS, the Board notes that the area in which the

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site is situated has recently been rezoned to an R4-1 district from R5, which cured the lot area and width objections that would arise within an R5 zoning district, but not the side yard objection; and

WHEREAS, additionally, the proposed Floor Area Ratio (FAR) of 0.98 does not comply with the maximum FAR in R4-1 districts; and

WHEREAS, a public hearing was held on this application on December 6, 2005, after due notice by publication in *The City Record*, with continued hearings on January 24, 2006 and February 28, 2006, and then to closure and decision on April 25, 2006; and

WHEREAS, Community Board 5, Queens, recommends disapproval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the site is located on the south side of 67th Road, 170 ft. east of 78th Street; and

WHEREAS, the site is 25 ft. in width, with a total lot area of 2,500 sq. ft.; and

WHEREAS, the site is currently vacant, and, according to the applicant, has never been developed; and

WHEREAS, the applicant states that the lot has existed in its present configuration since prior to 1961, and that there is no evidence that it was ever owned by the adjacent property owners or used in conjunction with the adjacent parcels; and

WHEREAS, the applicant proposes to construct a two-story plus attic, two-family home, with one parking space located within the building and one located between the street wall and street line, for which a reconsideration from DOB has been obtained; and

WHEREAS, the proposed home will have a total residential floor area of 2,447 sq. ft. (2,250 is the maximum permitted in a R4-1 district); a total residential FAR of 0.98 (0.90 is the maximum permitted in an R4-1 zoning district); and two side yards of 3'-0" each in width (8'-0" total width is required); and

WHEREAS, the applicant originally proposed a three-story home with an FAR of 1.25, and one 3'-0" side yard and one 2'-0" side yard; and

WHEREAS, the Board expressed concern about this proposal, finding it out of context relative to adjacent and area homes, and relative to the proposed rezoning; and

WHEREAS, at the request of the Board, the applicant modified the amount of stories and FAR, and proposed a home with a total FAR of 1.03; and

WHEREAS, the applicant then modified the proposal again to the current version; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is a vacant and narrow pre-existing lot that can not accommodate as of right development; and

WHEREAS, specifically, the applicant states that the width of the lot would only allow for a home with width of 12'-

0" and an inner dimension of 10'-0" due to the required side yards of 8'-0" and 5'-0"; and

WHEREAS, to reinforce the uniqueness of the lot, the applicant conducted a review of lots within the neighborhood, and concluded that of the 147 properties shown on the submitted 400 ft. radius diagram, only three vacant narrow lots exist, including the subject lot; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant represents that the requested waivers are necessary to develop the site with a habitable home; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that an as of right development will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant represents that the proposed residence, as modified over the course of the hearing process, will be consonant with the other homes existing in the area, and more in alignment with the new R4-1 zoning district parameters; and

WHEREAS, the applicant also notes that most of the properties on the subject block are occupied by two-family dwellings, and that the proposed building is identical in size or smaller than said dwellings; and

WHEREAS, the applicant observes that the width of the side yards as now proposed, when considered in conjunction with the yard conditions on the adjacent properties, will provide open area of at least five feet on each side; and

WHEREAS, at hearing, the Board expressed concern about the proposed garage and the slope of the ramp, on the basis that the slope did not comply with legal requirements; and

WHEREAS, however, the applicant stated that to comply with the slope would require that the garage door be set back more than six feet from the front wall of the home, which the applicant stated would not be desirable; and

WHEREAS, the applicant proposed that the Board waive the two-space requirement, and allow a single space parking pad on the side of the building; and

WHEREAS, however, the Board expressed a preference that the applicant seek a reconsideration from the Department of Buildings instead; as noted above, a reconsideration was obtained; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, because the applicant reduced the amount of proposed floor area and increased the width of one of the side

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yards, the Board finds that this proposal is the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, within an R4-1 zoning district, the proposed construction of a two-story plus attic, two-family home, that does not comply with applicable side yard and Floor Area Ratio requirements, contrary to Z.R. §§ 23-461(a) and 23-141; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received February 15, 2006”–two (2) sheets, “Received March 15, 2006”–one(1) sheet, and “Received April 10, 2006”–two (2) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.98; a floor area of 2,447 sq. ft.; and two side yards of 3’-0” each;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 25, 2006.

193-05-BZ

CEQR #06-BSA-012M

APPLICANT – The Law Office of Fredrick A. Becker, for 32 East 31st Street Corp., owner; Forever Young Spa Inc., lessee.

SUBJECT – Application August 16, 2005 – Under Z.R. 73-36 to allow the operation of a physical culture establishment in the cellar, first floor and first floor mezzanine of a ten story commercial building which is contrary to §32-21 Z.R.

PREMISES AFFECTED – 32 East 31st Street, East 31st Street between Park & Madison Avenues, Block 860, Lot 55, Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 8, 2005, acting on Department of Buildings Application No. 103761671, reads, in pertinent part:

“Proposed use of cellar and 1st floor for Physical Cultural Establishment and enlargement (1st floor mezzanine) accessory to Physical Cultural Establishment is not permitted as of right in C5-2 district and it is contrary to ZR 32-10.”; and

WHEREAS, this is an application under Z.R. §§ 73-36 and 73-03, to permit, within a C5-2 zoning district, the legalization of a physical culture establishment (“PCE”) located on the cellar, first floor, and first floor mezzanine of an existing ten-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, and then to decision on April 25, 2006; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the New York City Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the south side of 31st Street, between Madison Avenue and Park Avenue; and

WHEREAS, the subject PCE occupies 2,500 sq. ft. in the cellar, 3,500 sq. ft. on the first floor, and 1,350 sq. ft. on the mezzanine; and

WHEREAS, the applicant represents that the PCE will provide spa treatments and massage services by licensed massage professionals; and

WHEREAS, the PCE will have the following hours of operation: daily, 9:00 A.M. to 12:00 A.M.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the legalization of the PCE does not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

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WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06-BSA-012M, dated August 15, 2005 and

WHEREAS, the EAS documents show that the continued operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-2 zoning district, the legalization of a physical culture establishment located on the cellar level, first floor, and first floor mezzanine of an existing ten-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 20, 2006"-(3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on April 25, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 9:00 A.M. to 12:00 A.M., daily;

THAT all massages shall be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other

relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 25, 2006.

194-04-BZ thru 199-04-BZ

APPLICANT – Augusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179), Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178), Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177), Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176), Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175), Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to June 13, 2006, at 1:30 P.M., for continued hearing.

286-04-BZ & 287-04-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.

SUBJECT – Application August 18, 2004 – Under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED –

85-78 Santiago Street, west side, 11.74' south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#13), Borough of Queens.

85-82 Santiago Street, west side, 177' south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#15), Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Kurt E. Huppe, Linda Valentino, Hueichun Shing and Tom Tang.

ACTION OF THE BOARD – Laid over to June 13,

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2006, at 1:30 P.M., for continued hearing.

351-04-BZ

APPLICANT – The Agusta Group, for Stahva Realty, owner.
SUBJECT – Application November 1, 2004 – Under Z.R. §73-44 – to allow parking reduction for proposed enlargement of existing office building located in an R6B/C2-2.

PREMISES AFFECTED – 210-08/12 Northern Boulevard, thru lot between Northern Boulevard and 45th Road, 150' east of 211th Street, Block 7309, Lots 21 and 23 (Tentative Lot 21), Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Sol Korman and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to June 13, 2006, at 1:30 P.M., for continued hearing.

396-04-BZ

APPLICANT – Stroock & Stroock & Lavan, LLP, by Ross Moskowitz, Esq., for S. Squared, LLC, owner.

SUBJECT – Application December 21, 2004 – Under Z.R. §72-21 to permit the Proposed construction of a thirteen story, mixed use building, located in a C6-2A, TMU zoning district, which does not comply with the zoning requirements for floor area, lot coverage, street walls, building height and tree planting, is contrary to Z.R. §111-104, §23-145, §35-24(c)(d) and §28-12.

PREMISES AFFECTED – 180 West Broadway, northwest corner, between Leonard and Worth Streets, Block 179, Lots 28 and 32, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ross Moskowitz.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

398-04-BZ

APPLICANT – Eric Palatnik, P.C., for Babavof Avi, owner.
SUBJECT – Application December 23, 2004 – Under Special Permit Z.R. §73-622 – proposed legalization of an enlargement of a single family residence which causes non-compliance to Z.R. §23-14 for open space and floor area. The premise is located in R2 zoning district.

PREMISES AFFECTED – 2103 Avenue M, northeast corner

of East 21st Street, Block 7639, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

124-05-BZ

APPLICANT – Greenberg Traurig LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.

SUBJECT – Application May 20, 2005 – Under Z.R. §72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to Z.R. §35-00, 23-145, 35-52, 23-82, 13-143, 35-24, and 13-142(a).

PREMISES AFFECTED – 482 Greenwich Street, Block 7309, Lot 21 and 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson, Thomas McKam, Garrett Goorlay and William McQuizkin.

For Opposition: Victoria Faust, Peter Himmelstein, Geoffrey Hendricks, Filippo Manlia, Kate Koster and R. Barrett.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

202-05-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.

SUBJECT – Application August 24, 2005 – Under Z.R. to §73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district.

PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik, Steve Chon, Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for continued hearing.

320-05-BZ

APPLICANT – Rothkrug Rothkrug Weinberg, for John Catsimatidis, owner; 113 4th Sports Club, LLC, lessee.

SUBJECT – Application November 2, 2005 – Special Permit Under Z.R. §73-36, to allow the proposed operation of a physical cultural establishment located on portions of the cellar and first floor of an existing eight story mixed use structure. PCE use is 25, 475 sq ft of floor area. The site is located in a C6-1 Zoning District.

PREMISES AFFECTED – 113/9 Fourth Avenue, a/k/a 101/117 East 12th Street, N/E/C of Fourth Avenue and East

MINUTES

12th Street, Block 558, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16,
2006, at 1:30 P.M., for continued hearing.

323-05-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for DB
Real Estate Enterprises, LLC, owner.

SUBJECT – Application November 9, 2005 – Under Z.R.
§72-21 to allow a proposed two-family dwelling that does not
provide a required side yard in an R5 Zoning District;
contrary to Z.R. §23-461(b).

PREMISES AFFECTED – 488 Logan Street, West side of
Logan Street, 190ft south of intersection with Pitkin Avenue,
Block 4227, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 6,
2006, at 1:30 P.M., for decision, hearing closed.

351-05-BZ

APPLICANT – The Law Offices of Howard Goldman/Emily
Simons, Esq., for Atlas Packaging Solutions Holding Co.,
owner.

SUBJECT – Application December 14, 2005 – Variance ZR
§72-21 to allow a proposed four (4) story residential building
containing eight (8) dwelling units in an M2-1 Zoning
District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 146 Conover Street, south facing
block of Conover Street, between King and Sullivan Streets,
Block front of Conover Street, between King and Sullivan
Streets. Block 554, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Emily Simons and Jack Freeman.

ACTION OF THE BOARD – Laid over to July 11,
2006, at 1:30 P.M., for continued hearing.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for 908 Clove Road,
LLC, owner.

SUBJECT – Application December 22, 2005 – Variance ZR
§72-21 to allow a proposed four (4) story multiple dwelling
containing thirty (30) dwelling units in an R3-2 (HS) Zoning

District; contrary to Z.R. §§23-141, 23-22, 23-631, 25-622,
25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-
908 Clove Road) between Bard and Tyler Avenue, Block
323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik, Robert Pauls, Randy Lee,
Charles Bontempo and Frank Naso.

For Opposition: Vincent DiGesù, Patricia E. Schwimer and
Mary Ann H. McGowan.

ACTION OF THE BOARD – Laid over to June 13,
2006, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 8:00 P.M.

MINUTES

APRIL 26, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Wednesday morning, April 26, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL HEARING

334-05-BZ

APPLICANT – Kramer Levin Naftalis & Frank, LLP, for The Whitney Museum of American Art, owner.

SUBJECT – Application November 23, 2005 – Zoning Variance (use and bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the expansion of an existing museum complex including the construction a nine (9) story structure located in C5-1(MP) and R8B (LH-1A) zoning districts. The proposed variance would allow modifications of zoning requirements for street wall height, street wall recess, height and setback, mandatory use, and sidewalk tree regulations; contrary to Z.R. §§ 24-591, 99-03, 99-051, 99-052, 99-054, 99-06.

PREMISES AFFECTED – 933-945 Madison Avenue, 31-33 East 74th Street, East side of Madison Avenue between East 74th and East 75th Streets, Block 1389, Lots 21, 22, 23, 24, 25, 50, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Michael J. Sillerman, Adam D. Weinberg, Mark Carroll, Eric Boorstyn, Robert Hurst, Glenn D. Lowry, Thelma Golden, Lisa Dennison, Samuel Lindenbaum, Anne Locke, Elizabeth Mckie, Judith Schneider, Barry Schneider, Lisa Anastos, William La Riche, Josh Harlan, Leatrice Fresiser, Roger P. Lang, Philae Knight, Barbara Savrin, Marcia Brookler, Terri Wolfe and Juanna Simer.

For Opposition: Howard Zipser, Jee Mee Kim, Rosa Schupbach, Elizabeth Ashby, Don Gringer, Arene Schneider, Sally Barnett, Edward Klimerman, Garretson Clinn, Donna Levy, Cahert Moore, Lane H. MonRongey, Ruth Holzep, Jordan Saunders and Forid Gainfed.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: P.M.

BULLETIN

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Volume 91, No. 19

May 11, 2006

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

SATISH BABBAR, *Vice-Chair*

JAMES CHIN

CHRISTOPHER COLLINS

Commissioners

Jeffrey Mulligan, *Executive Director*

Roy Starrin, *Deputy Director*

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28-06-BZ	158 Beaumont Street, Brooklyn

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New Case Filed Up to May 2, 2006

76-06-BZ

150 East 58th Street, South side of East 58th Street, 85 feet east of the corner formed by intersection of Lexington Avenue and East 58th Street., Block 1312, Lot 41, Borough of **Manhattan, Community Board: 6.** SPECIAL PERMIT-73-03 & 73-36-To allow a Physical Cultural Establishment in a portion of an existing building's 11th and 12th floor.

77-06-A

96 Crabtree Avenue, Crabtree Avenue To Woodrow Road east of Turner Street., Block 7092, Lot 1, Borough of **Staten Island, Community Board: 3.** Appeal-Seeking BSA approval to continue development on blocks 7092 and 7105 in South Richmond, SI according to zoning regulations in effect in March of 1999 when foundation permits were issued. Development rights vested prior to a zoning change.

78-06-A

96 Crabtree Avenue, Crabtree Avenue to Woodrow Road east of Turner Street, Block 7105, Lot 555& 561, Borough of **Staten Island, Community Board: 3.** Appeal-Seeking BSA approval to continue development on blocks 7092 and 7105 in South Richmond, SI according to zoning regulations in effect in March of 1999 when foundation permits were issued. Development rights vested prior to a zoning change.

79-06-BZ

887 Bergen Street, North side of Bergen Street, 246 feet east of the intersection of Bergen Street and Classon Avenue., Block 1142, Lot 85, Borough of **Brooklyn, Community Board: 8.** Under 721-21-To permit a nine-unit multiple family dwelling.

80-06-BZ

318 East 73rd Street, East 73rd Street between 1st and 2nd Avenues., Block 1447, Lot 41, Borough of **Manhattan, Community Board: 8.** Under 72-21-To request permission to encroach onto rear yard required under Section 23-52 of the Zoning Resolution.

81-06-A

160 East 83rd Street, Between Third Avenue and Lexington Avenue, Block 1511, Lot 45, Borough of **Manhattan, Community Board: 8.** Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building code regarding required setbacks and building frontage.

82-06-BZ

172-12 Northern Boulevard, Between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of **Queens, Community Board: 7.** Under 72-21-to permit the re-development of an existing non-conforming eating and drinking establishment with accessory drive-thru in an R3-2

83-06-BZ

47-33 Fifth Street, North side of 5th Street, between 48th Avenue and 47th Road, Block 30, Lot 26, Borough of **Queens, Community Board: 2.** Under 72-21 to permit the conversion and enlargement of an existing four story warehouse structure in a M1-4/R6A (LIC) zoning district

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 13, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 13, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

APPEALS CALENDAR

413-50-BZII

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application October 12, 2005 - pursuant to ZR 11-411 & 11-412 for an Extension of Term of a Gasoline Service Station-UG 16 (BP North America) for ten years which expired on November 18, 2005. This instant application is also for an Amendment to legalize modifications to the previously approved signage on site.

PREMISES AFFECTED – 691/703 East 149th Street, northwest corner of Jackson Avenue, Block 2623, Lot 140, Borough of The Bronx.

COMMUNITY BOARD #15BX

224-66-BZ

APPLICANT – Peter Hirshman, for Building Management Co., owner.

SUBJECT – September 23, 2005 - Extension of Term & Waiver for the re-establishment of transient parking use within the existing garage of a multiple dwelling which expired on June 14, 2001. The proposed term of this filing is for ten (10) years. The premise is located in an R8B zoning district. PREMISES AFFECTED – 325-335 East 49th Street, aka 328-334 50th Street, northside of East 49th Street, 262'-4" west of First Avenue, Block 1342, Lots 12,13,15,39-41, 111, 139, Borough of Manhattan.

COMMUNITY BOARD #6M

71-93-BZ

APPLICANT – Paul F. Bonfilio, for Vincenzo Farruggio, owner.

SUBJECT – Application May 11, 2006 - Amendment to a previously granted Variance ZR72-21 to construct an additional single family residence on one zoning lot that has been sub-divided into two tax lots. The proposed application does not have the required 15' front yard and is contrary to ZR 23-45.

PREMISES AFFECTED – 153-11 Bayside Avenue, 193' west of 154th Street, Block 4835, Lot 27, Borough of Queens.

COMMUNITY BOARD #7Q

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application April 12, 2006 -pursuant to ZR 72-01 for the Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for the construction of a two story building for commercial use (Retail UG6) in a residential use district.

PREMISES AFFECTED – 70 East 184th Street, aka 2363 Morris Avenue, south side of East 184th Street, corner formed by the intersection of Morris Avenue, Block 3183, Lot 42, Borough of The Bronx.

COMMUNITY BOARD #5BX

182-04-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Chelsea Village Associates, owner; Harmic III, LLC, lessee.

SUBJECT – Application January 17, 2006 – Reopening for an amendment permit proposed eating and drinking establishment (comedy theater), Use Group 12, on a zoning lot, split between a C6-2A and R8B zoning district, of which a portion is located in the R8B district, is contrary to Z.R. §22-10.

PREMISES AFFECTED – 351/53 West 14th Street, north side, between Eighth and Ninth Avenues, Block 738, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #4M

CALENDAR

JUNE 13, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 13, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

381-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Zvi Realty, LLC, owner.

SUBJECT – Application December 2, 2004 - Variance pursuant to Z.R. Section 72-21 to permit the construction of a four-story building to contain 20 residential units with 10 parking spaces. The site is currently an undeveloped lot which is located in an M1-1 zoning district. The proposal is contrary to district use regulations pursuant to Z.R. Section 42-00.

PREMISES AFFECTED – 83 Bushwick Place a/k/a 225-227 Boerum Street, northeast corner of the intersection of Boerum Street and Bushwick Place, Block 3073, Lot 97, Borough of Brooklyn.

COMMUNITY BOARD #1BK

204-05-BZ

APPLICANT – Harold Weinberg, for Amalia Dweck, owner.

SUBJECT – August 26, 2005 - Pursuant to ZR §73-622, Special Permit for an enlargement of a two-family residence which increases the degree of non-compliance for floor area, open space, lot coverage and side yards is contrary to ZR §§23-141 and 23-461. The application also proposed an as-of-right change from a one-family dwelling to a two-family dwelling.

PREMISES AFFECTED – 2211 Avenue T, north side, 57' east of East 22nd Street, between East 22nd and East 23rd Streets, Block 7301, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #15BK

290-05-BZ

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated 4/19/06 - Variance pursuant to Z.R. Section 72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 & 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

60-06-A

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application April 5, 2006 - Request pursuant to Section 666 of the New York City Charter for a reversal of DOB's denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

311-05-BZ/310-05-A

APPLICANT – Joseph P. Morsellino, Esq., for Bernard F. Dowd, owner.

SUBJECT – Application October 19, 2005 - Special Permit pursuant to Z.R. Section 73-27 to legalize the existing second floor use in an existing funeral establishment. The site is located in a C4-2 zoning district. A case (310-05-A) was filed with the BZ case on 10/19/05 since the C of O lapsed for the prior A case (232-52-A).

PREMISES AFFECTED – 165-18/28 Hillside Avenue, Northeast corner Hillside Avenue and Merrick Boulevard, Block 9816, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 2, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, February 28, 2006, were approved as printed in the Bulletin of March 9, 2006, Volume 91, Nos. 9o & 10. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

360-49-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum, Inc., owner.

SUBJECT – Application November 14, 2005 – Pursuant to Z.R.§72-21 for an extension of term of the previously granted variance permitting the use of the site as a gasoline service station with accessory uses which expired on February 25, 2005. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 69-05 Eliot Avenue, northern corner of Eliot Avenue and 69th Street, Block 2838, Lot 38, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and for an extension of the term of the previously granted variance, permitting a gasoline service station pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on April 11, 2006, after due notice by publication in *The City Record*, and then to decision on May 2, 2006; and

WHEREAS, Community Board 5, Queens, recommends approval of this application, on the condition that the site remains free of graffiti; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the premises is a 10,000 sq. ft. site located on the northern corner of the intersection formed between Eliot Avenue and 69th Street; and

WHEREAS, the site is located within an R4 zoning district, and is improved upon with a gasoline service station;

and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 13, 1949, when, under the subject calendar number, the Board granted permission to construct and maintain a gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times, most recently on February 24, 1998, for a term of 10 years from the expiration of the prior grant, expiring on February 25, 2005; and

WHEREAS, at hearing, the Board asked the applicant to address the Community Board’s concerns regarding graffiti; and

WHEREAS, the applicant responded that the site is free of graffiti and submitted photographs supporting this assertion; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* the resolution, as adopted on September 13, 1949, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from February 25, 2005, to expire on February 25, 2015, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received April 13, 2006’ –(6) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 25, 2015;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 402221966)

Adopted by the Board of Standards and Appeals, May 2, 2006.

540-53-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Marbridge Realty Co., Inc., owner.

SUBJECT – Application October 25, 2005 – Extension of Term/Waiver for an existing parking lot accessory to a commercial building. The premise is located in a C2-4 and R3-1 zoning district.

MINUTES

PREMISES AFFECTED – 87-17 111th Street, Block 9301, Lots 124, 125, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, this is an application for a waiver of the Rules of Procedure and a reopening to extend the term of the prior grant for a parking lot, which expired on June 1, 2005, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on April 4, 2006, after due notice by publication in *The City Record*, and then to decision on May 2, 2006; and

WHEREAS, Community Board 9, Queens, recommends approval of this application, on the condition that the applicant plant three trees on the block pursuant to Parks Department guidelines; and

WHEREAS, the subject 10,000 sq. ft. site is located on the east side of 111th Street, south of Jamaica Avenue, and is located primarily within an R3-1 zoning district but with a small corner of the site in an R6-A (C2-4) district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 1, 1960, when, under calendar number 540-53-BZ, Vol. II, the Board granted permission to construct a two-story extension and add an accessory parking lot to the existing building; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times, most recently on January 9, 1996, for a term of 10 years from the expiration of the prior grant, expiring on June 1, 2005; and

WHEREAS, at hearing the Board questioned the applicant about providing street trees in front of the premises as per the Community Board’s request; and

WHEREAS, the applicant responded that due to conditions at the site, including curb cuts, it was unable to plant trees in accordance with Department of Parks and Recreation standards; and

WHEREAS, in light of this fact, the Board subsequently received a letter from the Community Board recommending approval of this application since the applicant agreed to plant three trees, not at the premises, but at other locations on the block; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on June 1, 1960, so that as amended this

portion of the resolution shall read: “to permit an extension of term, for an additional period of ten years from the expiration of the prior grant, to expire on June 1, 2015; on condition that the use shall substantially conform to drawings as filed with this application, marked ‘Received April 19, 2006’–(1) sheet; and on further condition:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402160264)

Adopted by the Board of Standards and Appeals, May 2, 2006.

357-72-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Permanent Mission of the Russian Federation to the U.N., owner.

SUBJECT – Application December 19, 2005 – Amendment to a previously granted Variance ZR 72-21 for a multiple dwelling and community facility complex to allow for the enclosure of an existing swimming pool and the enlargement of an accessory health and sports facility. The premise is located in an R-4 zoning district.

PREMISES AFFECTED – 355 West 255th Street, northwest corner of West 255th Street and Fieldston Road, Block 5846, 5848, Lots 1605, 1774, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, laid over to continued hearings on April 25, 2006 and then to decision on May 2, 2006; and

WHEREAS, the subject site is located on the east side of West 255th Street, between Mosholu Avenue and Fieldston Road; and

WHEREAS, on July 18, 1972, the Board granted an application under ZR § 72-21, to permit, in an R4 zoning district, the development of the site with a multiple dwelling and community facility complex to house a foreign mission, that

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encroached on the rear and side setbacks and had less than the required parking; an outdoor swimming pool was included in the plan; and

WHEREAS, subsequently, on July 3, 1973, the Board reopened and amended the application to extend the time to complete construction and to permit a revision of the previously approved plans; and

WHEREAS, on March 11, 1975, the Board again reopened and amended the application to allow minor changes in the building's configuration and a reduction in height; and

WHEREAS, the applicant now proposes to enclose the swimming pool, enlarge the sports facility, and enclose the existing walkway; and

WHEREAS, the enclosure of the pool and walkway and addition of the sports facility would increase the floor area by approximately 17,000 square feet; and

WHEREAS, the applicant represents that the subject proposal does not affect the rear and side setback, subjects of the prior variance, and is otherwise in compliance with all bulk regulations relating to floor area and lot coverage; and

WHEREAS, the applicant represents that since the additional floor area would be contained in a building that is accessory to the existing multiple dwelling, there is no new parking requirement; and

WHEREAS, the applicant states that since the proposal is merely to enclose the existing space, and the services will continue to be limited to existing users who are residents of the building on site, there will be no increased attendance or need for additional parking; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on July 18, 1972, so that as amended this portion of the resolution shall read: "to permit the enclosure of the existing swimming pool and walkway and the enlargement of the sports facility; *on condition* that all work shall substantially conform to drawings, filed with this application and marked 'Received April 10, 2006'-(8) sheets and 'April 25, 2006' (1) sheet; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall confirm compliance with applicable floor area regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 200925749)

Adopted by the Board of Standards and Appeals, May 2, 2006.

1180-80-BZ

APPLICANT – SFS Associates, for One Tiffany Place Condominium, owner.

SUBJECT – Application September 21, 2005 – Reopening for an amendment to the resolution to include superintendents' apartment in the cellar of the existing building.

PREMISES AFFECTED – 1 Tiffany Place, Block 320, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, to permit the construction of a superintendent's apartment in the cellar of the existing building; and

WHEREAS, a public hearing was held on this application on February 14, 2006 after due notice by publication in *The City Record*, laid over to continued hearings on April 11, 2006 and then to decision on May 2, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 6, Brooklyn recommended approval of this application; and

WHEREAS, the subject site is a 25,045 sq. ft. lot, with frontage on Tiffany Place, Kane Street, and Hicks Street; and

WHEREAS, on July 13, 1982, the Board granted an application under ZR § 72-21, to permit, in an M1-1 zoning district, the development of residential units in an existing manufacturing building at the site, plus the addition of one floor; and

WHEREAS, subsequently, the Board approved two amendments which allowed for an extension of time to complete construction and several design changes which resulted in a reduction of the total floor area; and

WHEREAS, the site has since been re-zoned to R6; and

WHEREAS, the applicant proposes to convert a recreation room in the cellar into a 1,324 sq. ft. superintendent's apartment, while relocating the recreation room to an adjacent space; and

WHEREAS, at hearing, the Board, asked the applicant if the apartment would comply with Multiple Dwelling Law § 34 concerning light and air; and

WHEREAS, the applicant represents that Multiple Dwelling Law § 34 does not apply to this building as it is classified under Article 7-B which provides for general residential occupancy of loft, commercial, or manufacturing buildings; and

WHEREAS, in order to meet applicable light and air

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requirements, the applicant proposes to excavate and lower a portion of the open area in the rear of the building; and

WHEREAS, the applicant acknowledges that said excavation will eliminate one parking space that can be relocated to the south side of the building; and

WHEREAS, the applicant represents that the proposal would increase the residential FAR from 3.33 to 3.39; and

WHEREAS, the applicant further represents that the proposal would result in a minor increase in the non-complying open space ratio and room count; and

WHEREAS, the applicant submits that with this request, the total floor area and number of apartments is still within the parameters originally approved by the Board; and

WHEREAS, specifically, the Board notes that it approved, by amendment, two sets of design changes since the initial Board grant and that the earlier versions included either a full sixth floor or a fifth-floor mezzanine; and

WHEREAS, additionally, the Board notes that the plans subsequently approved by letter resulted in approximately 20,000 fewer square feet, and 5 fewer apartments, than what was originally approved; and

WHEREAS, because of the scope of the original grant, the Board observes that the proposed minor increase in floor area does not affect the prior findings that the building was compatible with the neighborhood character and that the relief granted was the minimum necessary; and

WHEREAS, additionally, the Board observes that a superintendent's apartment is required by law for this building; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on July 13, 1982, so that as amended this portion of the resolution shall read: "to permit the construction of a superintendent's apartment in the basement of the existing building; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received February 7, 2006'-(1) sheet and 'May 1, 2006'-(2) sheets; and *on further condition*:

THAT the superintendent's apartment can only be occupied by the building's superintendent;

THAT this condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the Department of Buildings shall review compliance with all applicable light and air requirements;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Alt. No. 947-80)

Adopted by the Board of Standards and Appeals, May 2, 2006.

705-81-BZ

APPLICANT – Agusta & Ross, for Fraydon Enterprises, owner; New York Health & Racquet Club, lessee.

SUBJECT – Application May 23, 2005 – Application for an Extension of Term/Amendment/Waiver for a Variance Z.R. 72-21 to continue the operation of a physical culture establishment and to permit the change in hours of operation. The premise is located in an R-10 zoning district.

PREMISES AFFECTED – 1433-37 York Avenue, northwest corner of York Avenue and East 76th Street, Block 1471, Lots 21, 22 and 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, this is an application for (1) a waiver of the Rules of Practice and Procedure, (2) an extension of the term that expired on May 10, 2003, and (3) an amendment to extend the hours of a PCE previously granted a variance and to legalize interior layout changes to the approved plans; and

WHEREAS, a public hearing was held on this application on February 28, 2006, after due notice by publication in *The City Record*, laid over to April 11, 2006 and then to decision on May 2, 2006; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the subject premises is located at the northwest corner of York Avenue and East 76th Street; and

WHEREAS, on May 10, 1983, the Board granted a variance pursuant to ZR § 72-21, to permit, in a R10 zoning district, the expansion of an existing Physical Culture Establishment (PCE) in the cellar and the first floor onto the second floor of the existing seven-story mixed use building; and

WHEREAS, subsequently, the grant was re-opened and amended to modify the interior layout, increase the floor area, and to extend the term; and

WHEREAS, the instant application seeks to extend the hours of operation so as to open one hour earlier, at 6:00 a.m., daily; and

WHEREAS, the instant application also seeks to legalize certain layout reconfigurations, which do not increase the floor area; and

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WHEREAS, lastly, the instant application seeks to extend the term of the variance for ten years; and

WHEREAS, the Board instructed the applicant to notify neighbors about the application and public hearing in order to determine if prior noise issues had been resolved to their satisfaction; and

WHEREAS, the applicant submitted evidence to the Board confirming that noise concerns had been addressed by an acoustical study and subsequent remediation; and

WHEREAS, the Board reviewed the evidence and notes that acoustical measures were put in place; and

WHEREAS, at hearing, the Board heard testimony from neighbors that the noise issues were resolved; and

WHEREAS, accordingly, the Board finds that a ten-year extension and the proposed change in hours and internal configurations are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated May 10, 1983, so that as amended this portion of the resolution shall read: "to grant an extension of the term for a term of ten years from the expiration of the last grant, to extend the hours of operation by one hour, daily, and to permit internal layout reconfiguration; *on condition* that the use and operation of the PCE shall substantially conform to drawings as filed with this application, marked 'Received April 3, 2006' - (6) sheets and 'April 19, 2006' - (1) sheet; and *on further condition*:

THAT this grant shall be limited to a term of ten years from May 10, 2003, expiring May 10, 2013;

THAT the hours of operation shall be 6:00 a.m. to 10:00 p.m., daily;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, May 2, 2006.

636-54-BZ, Vol. II

APPLICANT – Walter T. Gorman, P.E., for Stephen & Jeanne Tamor (Trustees); Motiva Enterprises, lessee.

SUBJECT – Application February 22, 2006 - Extension of Time/Waiver to obtain a Certificate of Occupancy of a gasoline service station (Shell Station) for fifty-four (54) months from the expiration date of January 8, 2003. The premise is located in a C1-2 in R-5 zoning district.

PREMISES AFFECTED – 9612/24 Seaview Avenue, southwest corner of Rockaway Parkway, Block 8328, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: John Ronan.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for decision, hearing closed.

39-66-BZ

APPLICANT – Sheldon Lobel, P.C., for Andrea Woodner, owner.

SUBJECT – Application March 28, 2006 - Extension of Time/Waiver to obtain a Certificate of Occupancy, which expired in January 6, 2006, for transient parking of the unused and surplus tenants spaces in the accessory garage of a multiple dwelling building. The premise is located in a R6 zoning district.

PREMISES AFFECTED – 43-70 Kissena Boulevard, Block 5137, Lot 102, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith .

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, 10 A.M., for decision, hearing closed.

337-79-BZ, Vol. II

APPLICANT – Moshe M. Friedman, P.E., for Dr. Martin S. Bernstein, owner.

SUBJECT – Application January 23, 2006 – Extension of Term/Waiver for the conversion of the first story of an existing two (2) story residential building into medical offices, located in an R2 zoning district.

PREMISES AFFECTED – 2107 Avenue N, north side of Avenue N, 40' east of East 21st Street, Block 7657, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16,

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2006, at 10 A.M., for decision, hearing closed.

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for George Marinello, owner; Wendy’s Restaurant, lessee.

SUBJECT - Application January 12, 2006 – Pursuant to ZR§§72-21 and 72-22 for the extension of term for ten years for an accessory drive thru facility at an eating and drinking establishment (Wendy’s) which one-year term expired February 1, 2006. An amendment is also proposed to extend the hours of operation of the accessory drive-thru facility to operate until 4 a.m. daily. The premise is located in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, between 91st Street and Remsen Avenue, Block 8108, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD#17BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for continued hearing.

359-02-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich, LLC, owner; Montessori School of Manhattan, LLC, lessee.

SUBJECT – Application January 17, 2006 – Reopening for an Amendment to a previous variance ZR 72-21that allowed the operation of a school on the first floor and cellar in a six story building; a subsequent amendment in 2005 was to relocate the operation of the school from the cellar to the second floor and to maintain partial first floor operation. The current proposed amendment is to allow for the additional expansion of the school to the third floor of the building. The premise is located in an M1-5(TMU) zoning district.

PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street, west of Collister Street, Block 214, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker, Eric Wegweiser.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 9, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

428-05-BZY thru 431-05-BZY

APPLICANT – Sheldon Lobel, P.C., for Islandview Homes Development Corp., owner.

SUBJECT – Application December 28, 2005 – Proposed extension of time to renew building permits and complete construction of a minor development pursuant to Z.R. 11-332. Current R3-X zoning district.

PREMISES AFFECTED – 475, 473, 471, 470 Father Capodanno Boulevard, located 91.90’ west of Cross Streets, Father Capodanno Boulevard and McLaughlin Street, Block 3500, Tentative Lot Nos. 30, 31, 32, 33. Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of certificates of occupancy for, four townhouses currently under construction at the subject premises; and

WHEREAS, the Board notes that while separate applications were filed for each permit for each of the townhouses, in the interest of convenience, it heard the cases together and the record is the same for all the applications; and

WHEREAS, a public hearing was held on this application on April 11, 2006 after due notice by publication in *The City Record*, and then to decision on May 2, 2006; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the subject premises is a 14,641 square foot lot with frontage on Father Capodanno Boulevard, 92 feet from the intersection at McLaughlin Street; and

WHEREAS, the premises are currently located within an R3X zoning district, but were formerly located within an R3-2 zoning district; and

WHEREAS, the development complies with the former R3-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on December 3, 2003 (hereinafter, the “Enactment Date”), the City Council voted to adopt the rezoning of the area, which rezoned the site to R3X; and

WHEREAS, as of that date, foundation construction had been completed, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain certificates of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 et seq., which sets forth the

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regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as that proposed, which involves the construction of two or more buildings on contiguous zoning lots, as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective dater of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permits for the proposed development were lawfully issued to the owner by DOB, prior to the Enactment Date: Permit Nos. 500519325-01-NB, 500519316-01-NB, 500519307-01-NB, and 500519290-01-NB (hereinafter, the “New Building Permits”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date

and have been timely renewed; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed which includes completed foundations; and

WHEREAS, in addition, the applicant submits that due to the site’s proximity to wetlands, additional work was required to secure the foundations including the installation of more than 75 helical piles and the construction of a gabion wall around the perimeter of the site as required by the New York State Department of Environmental Conservation; and

WHEREAS, the applicant asserts that this significant subsurface work represents considerable construction for the small development of two-story plus basement homes; and

WHEREAS, further, the applicant asserts that the level of complexity of the work completed is much greater than that of the work remaining which includes framing, mechanicals, and other interior work; and

WHEREAS, in support of the contention that substantial work has been completed, the applicant has submitted the following evidence: photographs of the site showing the amount of work completed, including the gabion wall; building plans and foundation survey; and copies of contracts, work orders, invoices, and cancelled checks; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid New Building Permits which, as per the text of ZR § 11-332, is the governing standard; and

WHEREAS, nonetheless, at hearing, the Board asked the applicant how much work was completed since the Enactment Date; and

WHEREAS, the applicant responded that additional work was performed including the installation of sub slab plumbing and drains and the basement slabs; and

WHEREAS, as to time spent and complexity of the work completed, the applicant represents that 38 percent of the total time required for completion has been spent, and that this includes the most complex construction methods of the development; and

WHEREAS, the applicant notes that the work completed includes the basement which amounts to a substantial portion of the 2-story plus basement buildings; and

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WHEREAS, as to the work remaining to be completed, the applicant represents that the superstructure would take approximately two months and that it, and other remaining work, represents more conventional forms of construction; and

WHEREAS, as to expenditures, the applicant represents that the total hard costs are \$793,712.54 and the total hard costs already incurred are \$402,512.54, or 51 percent; in support of this claim, the applicant has submitted invoices and cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, the Board notes that the actual completion of physical construction is substantial considered in light of the amount of sub-surface work required due to soil conditions; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the New Building Permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site the requested two-year extension for completion of construction that is allowed under ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR §11-332 to renew New Building Permit Nos. 500519325-01-NB, 500519316-01-NB, 500519307-01-NB, and 500519290-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed townhouse developments for one term of two years from the date of this resolution, to expire on May 2, 2008.

Adopted by the Board of Standards and Appeals, May 2, 2006.

355-05-BZY

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue, Block 869, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for continued hearing.

360-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, Brooklyn, south side of 15th Street, 205' feet 5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

362-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th LLC, owner.

SUBJECT – Application December 16, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a six story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, Brooklyn, east side of Sixth Avenue 128'2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

367-05-A

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th Avenue, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, east side of Sixth Avenue, 128'-2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

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368-05-A

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, south side of 15th Street, 205'-5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

400-05-BZY/401-05-BZY

APPLICANT – John Patrick Curran of Tannebaum Helpert et al for Philip Caccese, owner.

SUBJECT – Application December 28, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R3-X Zoning District. Current R3-1 Zoning District.

PREMISES AFFECTED – 3202 & 3204 Morley Avenue, Block 4313, Lots 2 & 4, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MAY 2, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

72-05-BZ

APPLICANT – Harold Weinberg, P.E., for Cong. Shomlou
by Rabbi Marton Ehrenreich, owner.

SUBJECT – Application March 23, 2005 – Under Z.R. §72-
21 to permit the proposed erection of a synagogue and
yeshiva, with accessory residences, Use Groups 2 and 4,
located in an R6 zoning district, which does not comply with
the zoning requirements for floor area ratio, lot coverage, rear
yard and open space ratio, is contrary to Z.R. §§24-11, 23-
142, 24-36 and 24-12.

PREMISES AFFECTED – 245 Hooper Street, north side,
205' east of Marcy Avenue, between Marcy and Harrison
Avenues, Block 2201, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated January 17, 2006, acting on Department of
Buildings Application No. 3301743344, reads, in pertinent part:

“[The proposed synagogue and yeshiva, with
accessory quarters for a rabbi] proposes to provide a
rear yard below 30’ and is contrary to Section 24-36
ZR [and] creates non-compliance with respect to lot
coverage and is contrary to Sections 24-11 & 24-12 of
the Zoning Resolution [and] contrary to Section 24-
651, a minimum 20’ rear yard is required to ventilate
required windows”; and

WHEREAS, this is application for a variance under ZR §
72-21, to permit, on a site within an R6 zoning district, a
proposed four story plus cellar synagogue and yeshiva, with an
accessory dwelling unit for a rabbi, which does not comply with
the applicable rear yard, minimum distance between windows
and lot lines, and lot coverage provisions for community
facilities, contrary to ZR §§ 24-36, 24-561, 24-11 and 24-12;
and

WHEREAS, this application is being prosecuted on behalf
of the Congregation Somlou, a non-profit religious entity
(hereinafter, the “Synagogue”); and

WHEREAS, the applicant proposes to construct a 45 ft.
high building, with a community facility Floor Area Ratio
(FAR) of 3.44 (4.8 FAR is allowed), with Use Group (“UG”) 4
synagogue space on the first and second floors and in the cellar,
a UG 4 accessory rabbi’s apartment on the third floor, and a UG
3 yeshiva on the fourth floor, all of which conforms and
complies in the subject zoning district; and

WHEREAS, however, at certain heights, the rear yard of
the proposed building will not comply with the required 30 ft.
depth requirement; likewise, the proposed lot coverage is
89.1%, which exceeds the maximum permitted lot coverage of
65%; and

WHEREAS, additionally, because the rear yard is
deficient at certain heights, non-compliance as to the minimum
required distance between windows and rear lot line (20 ft.
minimum) is also created; and

WHEREAS, the applicant initially proposed to construct a
five-story, 4.1 FAR synagogue and yeshiva building, with eight
UG 2 residences, which would have required residential FAR,
street wall height, and setback relief in addition to lot coverage
and rear yard relief; and

WHEREAS, the Board expressed concern about this
proposal, noting that there was no justification for waivers such
as FAR and street wall height that arose solely because the
application included market rate UG 2 residences; and

WHEREAS, the applicant then reduced the amount of
residential units to four, and attempted to convince the Board
that the residences could be construed as a UG 3 monastery use;
and

WHEREAS, the Board asked the applicant to confirm this
purported classification with the Department of Buildings, but
the applicant was unable to provide the Board with satisfactory
confirmation that DOB would accept such a Use Group
designation for the proposed units; and

WHEREAS, the Board also does not find such a
classification warranted; and

WHEREAS, thus, the Board encouraged the applicant to
propose a reduced scale building, that would not require relief
beyond rear yard and lot coverage, and which would include a
modest amount of floor area devoted to a single UG 4 accessory
unit for a rabbi; and

WHEREAS, the Board also asked the applicant to
redesign the proposed building, eliminating an unnecessary
courtyard within the building; and

WHEREAS, the applicant subsequently submitted the
proposed version of the application, which the Board finds
acceptable; and

WHEREAS, a public hearing was held on this
application on November 1, 2005, after due notice by
publication in *The City Record*, with continued hearings on
December 13, 2005, January 31, 2006, and March 28, 2006, and
then to decision on May 2, 2006; and

WHEREAS, the premises and surrounding area had a site
and neighborhood examination by a committee of the Board,
consisting of Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin, and Commissioner Collins; and

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WHEREAS, Community Board 1, Brooklyn, recommends disapproval of the original version of the application, on the basis that the applicant failed to establish unique hardship or institutional need; and

WHEREAS, the subject premises is located on the north side of Hooper Street, 205 feet east of Marcy Avenue, and is a vacant and irregular 3,605 sq. ft. interior lot, with 40 ft. of frontage; and

WHEREAS, the applicant states that the site as currently configured is the result of a lot merger between two 20 ft. wide lots, one of which was approximately 80 ft. deep and one of which was approximately 100 ft. deep; as a consequence of the merger, the site's rear lot line is irregular; and

WHEREAS, the applicant states that the approximately 80 ft. deep lot was previously occupied by a building, which was demolished in the 1990s due to its unsafe condition; and

WHEREAS, the applicant states that the lot merger was consummated in order to provide the Synagogue with sufficient lot width to meet its programmatic needs; and

WHEREAS, the configuration of the building will be as follows: the first floor will be fully built out to the rear lot line; the second floor will be built to a depth of 80 ft. (an approximately 10 ft. and approximately 30 ft. rear yard waiver is required); and the third and fourth floors will be built to a depth of 70 ft. (an approximately 10 ft. rear yard waiver is required); and

WHEREAS, the applicant states that the following are the programmatic needs of the Synagogue: (1) increased space to accommodate worship spaces, including separate spaces for men and women, and special events; (2) sufficient classroom and accessory space for the yeshiva; and (3) a rabbi's apartment with sufficient space for meetings and consultations; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site is irregular in depth, with one portion of the site extending 80 ft. from the front lot line, and one portion extending 100 ft. from the front lot line; and (2) with the application of the thirty ft. rear yard requirement, the irregular depth would create a building with an irregular floor plate (50 ft. for a 20 ft. width, and then 70 ft. for another 20 ft. in width); and

WHEREAS, the applicant claims that the irregularity and the resulting floor plates compromises the ability of the Synagogue to develop the site with an efficient building that would accommodate the stated programmatic needs; and

WHEREAS, the applicant argues that the requested rear yard and window ventilation waivers would enable the Synagogue to develop the site with a building with a uniform rear wall line at a depth of 70 ft.; and

WHEREAS, the applicant states that in addition to facilitating a uniform floor plate that could better accommodate the programmatic needs, the waivers also allow the Synagogue to avoid the increased construction costs that would arise from compliance with the rear yard provision; and

WHEREAS, the Board notes that the lot coverage waiver

is the result of the rear yard waiver, which allows an increased building footprint over the site in excess of what is permitted; and

WHEREAS, the Board observes that unlike the earlier proposals, the specific waivers requested in the current version have a nexus to the lot's unusual configuration and the needs of the Synagogue; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate and in conjunction with the programmatic needs of the Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the rear yard waivers will not affect the neighbor to the rear because that site has an approximately 100 ft. rear yard; and

WHEREAS, the applicant also states that the part of the building that will be constructed within the required rear yard will not be visible from the street; and

WHEREAS, the Board observes that aside from the rear yard waiver and related lot coverage waiver, the proposed bulk of the building and the uses therein are as of right; and

WHEREAS, the Board further observes that the Synagogue occupies the first two floors of the building, and that community facilities are allowed to build into the rear yard to height of 23 ft. so long as there is only one story; and

WHEREAS, since the proposed building will be 25 ft. high at the roof of the second floor, the rear yard waivers as to the second and third floors do not represent a significant deviation from a bulk form permitted as of right; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the lot merger does not represent a self-created hardship because the building on the 80 ft. deep lot was in an unsafe condition, and that even if the lots had not been merged, no development that would have met the programmatic needs of the Synagogue could have occurred on either of the two pre-existing narrow lots; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, after accepting guidance from the Board as to the design of the building, the uses therein, and the necessary waivers, the applicant amended the proposal to the current

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version, which the Board finds to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA109K, dated August 7, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6 zoning district, a proposed four story plus cellar synagogue and yeshiva, with an accessory dwelling unit for a rabbi, which does not comply with the applicable rear yard and lot coverage provisions for community facilities, contrary to ZR §§ 24-36, 24-561, 24-11 and 24-12, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 25, 2006" -(4) sheets; and "Received March 31, 2006" -(1) sheet and *on further condition*:

THAT the third floor rabbi's apartment shall only be occupied by a rabbi of the congregation occupying this building;

THAT any change in ownership, control or ownership of the building shall require the prior approval of the Board;

THAT the third floor rabbi's apartment shall be the only

space within the building with sleeping/living accommodations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the following shall be the parameters of the proposed building: four stories plus a cellar, a community facility and total FAR of 3.44; lot coverage of 89.1 percent; a street wall and total height of 45 ft; and rear yards as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2006.

163-05-BZ

APPLICANT – Harold Weinberg, for Aaron (Ari) Presser, owner.

SUBJECT – Application July 19, 2005 – Special Permit – pursuant to ZR §73-622 for the enlargement of single family home which seeks to vary ZR §23-141 for the increase in floor area and open space ratio, ZR §23-47 for less than the minimum 30' rear yard required and ZR §23-461 for less than the required side yard. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1134 28th Street, west side, 260' south of Avenue K, Block 7627, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 14, 2005, acting on Department of Buildings Application No. 301973112, reads, in pertinent part:

1. Increases the degree of non-compliance with respect to floor area ratio . . . contrary to Section 23-141 of the Zoning Resolution.
2. Increases the degree of non-compliance with respect to the open space ratio . . . contrary to Section 23-141 of the Zoning Resolution.
3. Reduces the rear yard below 30 ft. and is contrary to Section 23-47 of the Zoning

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Resolution.

4. Increase the degree of non-compliance with respect to side yards and is contrary to Section 23-461 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), Open Space Ratio (OSR), and rear and side yards, contrary to ZR §§ 23-141, 23-47 and 23-461; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, and then to decision on May 2, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the west side of East 28th Street, 260 ft. south of Avenue K; and

WHEREAS, the subject lot has a total lot area of 2,666 sq. ft.; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant proposed to increase the floor area from the existing 1,884 sq. ft. (0.71 FAR) to 2,388.6 sq. ft. (0.89 FAR); the maximum floor area permitted is 1,334 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement decreases the OSR from 86.2 percent to 60.1 percent; the minimum required OSR is 150 percent; and

WHEREAS, the proposed enlargement reduces the size of the rear yard from 31 ft. to 20 ft.; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, the widths of the one complying side yard of 6’-9” and the one non-complying side yard of 2’-2” will be maintained, but both yards will be extended through the straight-line enlargement into the rear yard; and

WHEREAS, at hearing, the Board suggested to the applicant that the proposed parking space was inaccessible and should be removed from the plan; the applicant subsequently modified the plans, showing removal of the parking space; and

WHEREAS, the Board finds that the proposed enlargement at the rear of the building neither alters the essential character of the surrounding neighborhood, nor impairs the future use and development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be

made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, Open Space Ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-47 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “February 27, 2006”-(7) sheets and “May 1, 2006”-(3) sheets; and *on further condition*:

THAT the total FAR on the premises shall not exceed 0.89;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2006.

289-05-BZ

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, owner.

SUBJECT – Application September 19, 2005 – Under Z.R. §73-50 – to waive Z.R. §33-292 – waiving the require 30 foot open area at the rear of premises.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly and Clarendon Roads, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

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THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 10, 2006, acting on Department of Buildings Application No. 301441483 reads, in pertinent part:

“Amendment filed to obtain approval to expand the entire building footprint to occupy the site which is contrary to ZR Section 33-292, and this requires [a] special permit pursuant to Section 73-50 . . . another special permit is sought pursuant to Section 73-431 with regards to the parking requirement. This is contrary to Section 36-21.”; and

WHEREAS a public hearing was held on this application on February 28, 2006 after due notice by publication in *The City Record*, with a continued hearing on April 4, 2006, and then to decision on May 2, 2006; and

WHEREAS, this application is brought on behalf of Tabernacle of Praise (hereinafter, the “Church”), a not-for-profit entity; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 17, Brooklyn recommended approval of this application; and

WHEREAS, this is an application under ZR §§ 73-03, 73-431, and 73-50, to permit on a lot in a C8-1 zoning district abutting an R4 zoning district, the proposed construction of a church with an accessory banquet hall, without both the required rear yard setback from the district boundary and the required number of parking spaces, contrary to ZR §§ 33-292 and 36-21; and

WHEREAS, the subject site is a 16,000 sq. ft. lot, situated on the western side of Utica Avenue between Beverly and Clarendon Roads; and

WHEREAS, the subject site is located entirely within a C8-1 zoning district but the subject block is divided along its length by a district boundary, and an R4 zoning district abuts the rear of the site; and

WHEREAS, the site was formerly improved upon with a commercial building containing 8,707 sq. ft. of floor area, which was demolished in anticipation of the proposed development; and

WHEREAS, the proposed church is two full stories, with a partial third floor, as well as a cellar where a banquet hall, storage, and activity rooms will be located; and

WHEREAS, the total community facility floor area is 24,380 sq. ft.; and

WHEREAS, the proposed building will have a complying wall height of 30 feet, a height of 44 feet for the partial third floor, and a complying community facility FAR of 1.56 (2.40 is the maximum permitted); and

WHEREAS, however, the building will not have a setback from the district boundary line (30 feet is required) and will only provide 67 offsite parking spaces (82 onsite are required); and

WHEREAS, specifically, as to the setback issue, ZR § 33-292 requires that an open area not higher than curb level

and at least 30 feet in depth be provided at the rear of the site, within the commercial zoning district, and up to the district boundary; and

WHEREAS, pursuant to ZR § 73-50, the Board may grant a waiver of rear yard requirements set forth in ZR § 33-292 in appropriate cases; and

WHEREAS, the applicant represents that the subject special permit is necessary to ensure the viability of the project, meet the expanded space requirements for the church, and provide the minimum floor space necessary to effectively conduct programming and services; and

WHEREAS, the applicant asserts that strict compliance with ZR § 33-292 would result in a main sanctuary that would be 30 percent smaller than that proposed, which could not meet the growing congregation’s space needs; and

WHEREAS, at hearing, the Board asked the applicant to examine the effect of providing a ten-foot setback from the district boundary line; and

WHEREAS, the applicant responded that the provision of a ten-foot setback would result in the loss of 158 of the proposed 1230 seats, or space for approximately 13 percent of the congregation; and

WHEREAS, following the Board’s suggestion, the applicant revised the building plans to provide a ten-foot rear setback at a height of 29 feet, 5 inches, for the partial third floor; and

WHEREAS, locating the setback at this height avoids the loss of seats; and

WHEREAS, the Board notes that as a result of this rear setback, the building’s encroachment into the 30-foot rear yard is for 30 feet at the full first and second stories and a small portion of the third story, and 20 feet for the majority of the third floor, or that portion above the height of 29 feet 5 inches; and

WHEREAS, the Board also notes: (1) that church use is allowed in residential districts and that if this church were in an R4 zoning district, it would have been able to extend the first-story of the building into the rear yard for 23 feet, and (2) the previous commercial building on the subject site extended into the rear yard prior to its recent demolition; and

WHEREAS, based upon the above, the Board finds that the rear yard waiver will not have an adverse affect on the surrounding area; and

WHEREAS, as to the parking, ZR § 36-21 requires that one parking space be provided for every 15 persons of the rated capacity for the “facility’s largest room of assembly”; and

WHEREAS, the largest room of assembly has a capacity of 1,230 people, thus, 82 parking spaces are required; and

WHEREAS, pursuant to ZR § 73-431, the Board may grant a waiver of parking requirements for houses of worship upon determining that (1) it will be operated or utilized in such a manner as to reduce demand for onsite parking and (2) such reduction is commensurate with the reduced demand for onsite parking; and

WHEREAS, in reaching this determination, the Board may consider factors such as: the size of the congregation,

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the frequency and time of worship services and other events, and the proximity of public transportation; and

WHEREAS, the applicant has submitted evidence that the Church has purchased 1117 Utica Avenue (Block 4761, Lot 58) which is situated immediately across the street from the site and which can accommodate 27 attended parking spaces; and

WHEREAS, additionally, the Church has entered into a contract with the owner of 1124-28 Utica Avenue (Block 4760, Lot 24) to lease 40 attended parking spaces during Sunday church services; and

WHEREAS, in addition to the parking plan, the applicant submitted evidence that there are many available parking spaces on the street on Sundays; and

WHEREAS, the applicant asserts that the large majority of the Church's congregants live within the surrounding neighborhood, with 87 percent within a three-quarters of a mile, and that most will walk or take public transportation to the Church; and

WHEREAS, the applicant also identified four bus lines and two subway lines in reasonable proximity to the site; and

WHEREAS, the Board has reviewed the parking plan and evidence of on-street parking, and agrees that the Church's ownership of 27 parking spaces and its contract to lease 40 others for Sunday use, along with the availability of on-street parking and public transportation, addresses the Church's parking needs; and

WHEREAS, the Board also finds that the demand for on-site parking is mitigated by the close proximity of the residences of the majority of the congregants; and

WHEREAS, based upon the above, the Board finds that the parking waiver will not have an adverse affect on the surrounding area; and

WHEREAS, the Board has determined that the disadvantages to the community at large are outweighed by the advantages derived from the special permits and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-03, 73-431, and 73-50.

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA018K, dated December 27, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials;

Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings to grant special permits pursuant to ZR §§ 73-03, 73-431, and 73-50, to allow, on a lot in a C8-1 zoning district abutting an R4 zoning district, the proposed construction of a church with an accessory banquet hall, without the required rear yard setback from the district boundary and the required number of parking spaces, contrary to ZR §§ 33-292 and 36-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received May 1, 2006" – (1) sheet, "Received April 28, 2006" – (5) sheets, "Received April 17, 2006" – (1) sheet, "Received December 29, 2005" – (5) sheets and *on further condition*:

THAT there shall be no change in ownership, operator or control of the site without the prior consent of the Board;

THAT 27 accessory parking spaces for the church shall be located at 1117 Utica Avenue (Block 4761, Lot 58);

THAT there shall be no commercial parking at 1117 Utica Avenue;

THAT the church shall obtain and maintain an operative lease with the owner of 1124-28 Utica Avenue (Block 4760, Lot 24) for the use of 40 accessory parking spaces on Sundays;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the church shall execute and record a restrictive declaration limiting the use of 1117 Utica Avenue to accessory parking for the church;

THAT that said restrictive declaration must be executed and recorded and submitted to the Department of Buildings for review and approval prior to issuance of any building permit for the proposed construction;

THAT the lease with the owner of 1124-28 Utica Avenue shall be submitted to the Department of Buildings for review and approval prior to the issuance of any certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

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jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2006.

293-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 342 Realty, LLC, owner.

SUBJECT – Application September 29, 2005 – This application is filed pursuant to Z.R. §73-44 to request a Special Permit to allow a reduction of required parking for an as-of-right commercial building located within a C8-1 zoning district.

PREMISES AFFECTED – 8751 18th Avenue, between 18th Avenue and Bay 19th Street approximately 100 feet East of Bath Avenue, Block 6403, Lot 6, Borough of Brooklyn

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 14, 2005, acting on Department of Buildings Application No. 302003506, reads:

“Proposed reduction of required accessory parking spaces for proposed office building at the premises requires a special permit from the New York City Board of Standards and Appeals pursuant to Section 73-44 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C8-1 zoning district, a reduction in the required number of accessory parking spaces for a proposed Use Group 6 office building from 36 to 18, contrary to Z.R. § 36-21; and

WHEREAS, a public hearing was held on this application on April 11, 2006, after due notice by publication in *The City Record*, and then to closure and decision on May 2, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on 18th Avenue,

approximately 100 ft. east of Bath Avenue, and has a lot area of 12,005 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 11,061 sq. ft. two-story as of right office building, subsequent to the demolition of a smaller existing building; and

WHEREAS, the proposed office building will be occupied by the owner of the site, a union pension fund; and

WHEREAS, pursuant to ZR § 36-21, UG 6 uses in parking requirement category B1 within the subject zoning district are required to have one space per 300 sq. ft. of floor area; thus, the proposed office building is required to have 36 accessory parking spaces; and

WHEREAS, however, pursuant to ZR § 73-44, the Board may allow a reduction in the number of accessory off-street parking spaces required under ZR § 36-21; and

WHEREAS, for the subject C8-1 zoning district and the subject UG 6 use, the Board may reduce the required parking from 1 space per 300 sq. ft. of floor area to 1 space per 600 sq. ft. of floor area; and

WHEREAS, the applicant represents that assuming a special permit is obtained, the site will be developed with an 18 space accessory parking lot; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the proposed UG 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant has submitted sufficient evidence of the good faith of the union in pursuing the proposed UG 6 office use; in particular, the Board observes that the union currently owns the site and will occupy the proposed building, and that the union has submitted documentation as to the need to replace its existing Manhattan location with the proposed Brooklyn office; and

WHEREAS, at hearing, the Board expressed concern about the following matters: (1) the feasibility of the proposed parking layout; (2) the availability of mass transit and available street parking; and (3) the operation of the union at the proposed building; and

WHEREAS, as to the first issue, the applicant cited to a pre-consideration from the Department of Buildings that indicated that the layout complied with applicable regulations; and

WHEREAS, additionally, the Board will condition this grant on DOB review and approval of the parking layout; the Board is not approving the layout and no layout is reflected on the BSA-approved plans; and

WHEREAS, as to the second issue, the applicant cited to a parking and transportation survey, which reflects the availability of significant street parking in the area of the premises, as well as the proximity of two bus lines and two subway lines; and

WHEREAS, as to the third issue, the applicant submitted a statement regarding the operations of the proposed facility, which states that the building will be occupied by 35 employees, the majority of whom will use mass transit to get to work; and

WHEREAS, further, the facility will only generate approximately 25 visitations per week, since the majority of customer service provided by the employees of the facility

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shall be via telephone or e-mail; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to Z.R. §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA019K dated January 23, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-44 and 73-03, to permit, within a C8-1 zoning district, a reduction in the required number of accessory parking spaces for a proposed Use Group 6 office building from 36 to 18, contrary to Z.R. § 36-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received April 18, 2006" -(6) sheets and "Received May 1, 2006" -(1) sheet and on further condition:

THAT there shall be no change in ownership or use of the site or the building without prior application to and approval from the Board;

THAT a minimum of 18 parking spaces shall be provided in the accessory parking lot;

THAT no certificate of occupancy shall hereafter be issued if the use of the site is changed to a use that would require more accessory parking spaces than UG 6 parking category B1, unless additional accessory off-street parking spaces sufficient to meet such requirements are provided;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the layout and design of the accessory parking

lot shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2006.

340-05-BZ

APPLICANT – The Law office of Fredrick A. Becker, for Chelsea Eighth L.P., owner; TSI West 16th Street dba New York Sports Club, lessee.

SUBJECT – Application November 29, 2005 – Variance under Z.R. §72-21. In C1-6A, C6-2A, R8B districts, permission sought to legalize a physical culture establishment (PCE), located in the portions of the cellar and first floor of an existing 22-story mixed-use building. The proposed use is contrary to district use regulations.

PREMISES AFFECTED – 270 West 17th Street, a/k/a 124-128 Eighth Avenue, easterly sided of Eighth Avenue between 17th Street and West 16th Streets, Block 766, Lots 1101, 1102, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 13, 2006, acting on Department of Buildings Application No. 103949916, reads, in pertinent part:

“Physical Culture Establishment use is not allowed within a C1-6A, C6-2A, and R8B zoning district pursuant to ZR Sections 32-00 and 22-00.”; and

WHEREAS, this is an application under ZR § 72-21, to permit the legalization of a physical culture establishment (PCE) located in a portion of the cellar and first floor of an existing mixed-use 21-story building; and

WHEREAS, a public hearing was held on this application on April 4, 2006 after due notice by publication in *The City Record*, and then to decision on May 2, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

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WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject building is located on the east side of Eighth Avenue between 16th and 17th Streets; and

WHEREAS, the building is located on a site that is now, subsequent to the Chelsea Rezoning in 1999, partially with a C1-6A zoning district, partially within a C6-2A district, and partially within an R8B district; and

WHEREAS, the PCE itself is located within that portion of the building that is within the C1-6A and C6-2A districts; and

WHEREAS, a PCE is not permitted in the C1-6A zoning district, pursuant to ZR § 32-00 and 22-00; therefore, a variance is required; and

WHEREAS, prior to the rezoning, the site was formerly within C2-5 (R8), C6-2M, and R8 zoning districts; and

WHEREAS, the record indicates that on October 25, 1994, under BSA Cal. No. 162-93-BZ, the Board previously a special permit allowing the PCE, because it was located within that portion of the building that was within the C2-5 and C6-2M zoning districts, where PCEs are allowed; and

WHEREAS, however, because of the change in the site's zoning, when this previously approved special permit's term lapsed, no extension was available; and

WHEREAS, the existing PCE occupies a total of 16,606 sq. ft. of floor area within the building, including 12,306 sq. ft. of the cellar and 4,300 sq. ft. of the first floor; and

WHEREAS, the applicant represents that the PCE space is located primarily within the C1-6A district, though a small corner of the cellar is within the C6-2A district; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) the space occupied by the PCE has only 16 feet of frontage on Eighth Avenue; and (2) more than 75 percent of the space is at the cellar level; and

WHEREAS, the applicant states that the above-mentioned characteristics are unique in relation to other commercially occupied sites in the area, in that other sites do not have significant below-grade commercial space; and

WHEREAS, the applicant represents that the layout of the space occupied by the PCE and its location primarily in the cellar cause it to be poorly suited for a conventional retail use, since the amount of frontage on a commercial street (Eighth Avenue) is limited and the significant cellar space has no windows or street presence; and

WHEREAS, based on the above, the Board finds that there are unique physical conditions inherent to the existing space, which, when considered in the aggregate, create an unnecessary hardship in conforming strictly with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that developing the building with a conforming use would not yield the owner a reasonable return as the space is substandard and has limited value; and

WHEREAS, the Board observes that the viability of the

21-story building depends, in part, upon revenue generation from commercially zoned spaces within the building, including the space occupied by the PCE; and

WHEREAS, further, the Board observes that without the variance, such space would not generate such revenue, given its lack of desirability for other as of right retail uses because of its location and configuration; and

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood, impair appropriate use or development of adjacent property or be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized by a mix of commercial and residential uses, and that the existing PCE has been operating at the site for more than 10 years and remains compatible with these uses; and

WHEREAS, the hours of operation for the PCE are 6:00 p.m. to 11:00 p.m., Monday through Thursday; 6:00 a.m. to 10:00 p.m., Friday; and 8:00 a.m. to 9:00 p.m., weekends; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the Board notes that although a variance is being requested, the subject application meets all the requirements of the special permit for a PCE, except for the required zoning district; and

WHEREAS, the PCE contains facilities for classes, instruction and programs for physical improvement, bodybuilding, weight reduction and aerobics; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR 06-BSA-036M, dated November 29, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and

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Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.4, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit the legalization of a physical culture establishment located in the cellar and first floor of an existing mixed-use building located on a site within R8B, C1-6A and C6-2A zoning districts, contrary to ZR § 32-00; on condition that all work shall substantially conform to drawings, filed with this application marked "Received April 17, 2006" - (2) sheets; and on further condition:

THAT the term of this variance will be ten years from October 25, 2004, to expire on October 25, 2014;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 6:00 A.M. to 11:00 P.M., Monday through Thursday; 6:00 AM to 10:00 P.M., Friday; and 8:00 A.M. to 9:00 P.M., weekends;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all fire protection measures indicated on the BSA-approved plans shall be installed and maintained, as approved by DOB;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2006.

19-06-BZ

APPLICANT – Sheldon Lobel, P.c., for MiCasa HDFC, owner.

SUBJECT – Application January 27, 2006 – Under §72-21 to

permit a proposed eight-story residential building which requires variance of Z.R. §§23-145 (floor area), 23-633 (height and setback) 25-25c (parking), 23-851(court regulations) and 23-861 (legal window), located in an R7-1 zoning district.

PREMISES AFFECTED – 745 Fox Street, entire block front of East 156th Street between Fox Street and Beck Street, Block 2707, Lot 11, Borough of The Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 15, 2004, acting on Department of Buildings Application No. 401843243, reads, in pertinent part:

“Floor Area: Floor area does not comply with ZR 23-145 of the Quality Housing Regulations.

Proposed residential floor area exceeds maximum allowed floor area of 68,800 S.F.

Wall Height: Proposed wall height does not comply with ZR 23-633c. Proposed wall height exceeds maximum wall height of 60’

Total Height: Total height does not comply with ZR 23-633c. Proposed total height exceeds maximum total height of 75’

Setback: Proposed setback does not comply with 23-633b. Proposed zero setback does not comply with required 20’ setback.

Court Regulations: Court does not comply with ZR 23-851. Proposed courtyard depth is less than minimum dimension of 30’

Legal Windows: Distance from wall does not comply with ZR 23-861. Proposed wall is less than minimum distance of 30’

Parking: Provision of parking spaces does not comply with ZR 25-25c. No parking spaces are provided.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R7-1 zoning district, the proposed construction of an eight-story plus basement residential building that exceeds the permitted Floor Area Ratio (FAR), wall height, and total height, and does not provide the required setback, courtyard depth, window distance from wall, and parking, contrary to ZR §§ 23-145, 23-633, 23-851, 23-861, and 25-25; and

WHEREAS, a public hearing was held on this application on April 11, 2006 after due notice by publication in The City Record, and then to decision on May 2, 2006; and

WHEREAS, this application is brought on behalf of

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MiCasa HDFC, a not-for-profit entity; and

WHEREAS, Community Board 2, Bronx, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins; and

WHEREAS, the site's lot area is 20,000 sq. ft., and it encompasses the entire 200 foot length of the block on the southern side of 156th Street, extending 100 feet south along Fox and Beck Streets; and

WHEREAS, the premises is located in the Longwood Historic District, as designated by the New York City Landmarks Preservation Commission (LPC); and

WHEREAS, the site is currently improved upon with a two-story 8,707 sq. ft. historic structure that the applicant contends is in poor condition and has been vacant for twenty years; and

WHEREAS, the applicant notes that due to the regulations governing the Longwood Historic District, the existing building may not be demolished and its rehabilitation is subject to LPC guidelines; and

WHEREAS, the applicant proposes to rehabilitate the existing historic structure for use as a community facility; and to develop the remainder of the site with an eight-story plus basement 95-unit residential building; and

WHEREAS, the proposed building will have a total floor area of 89,850 sq. ft. (96,000 sq. ft. is the maximum permitted); a total FAR of 4.49 (4.8 is the maximum permitted); a residential floor area of 82,447 sq. ft. (68,800 sq. ft. is the maximum permitted); a total residential FAR of 4.12 (3.44 is the maximum permitted); a total community facility floor area of 7,403 sq. ft. (20,000 sq. ft. is the maximum permitted); a total community facility FAR of .37 (1.0 is the maximum permitted); a street wall height of 78 feet (60 feet is the maximum permitted), without a setback (a 20 foot setback is the minimum required); a total height of 78 feet (75 feet is the maximum permitted); and no parking spaces (14 spaces are required); and

WHEREAS, the Board notes that the applicant initially requested a waiver for a street wall height of 83 feet, though the LPC approved a street wall height of 78 feet; and

WHEREAS, the applicant subsequently amended the street wall height to 78 ft.; and

WHEREAS, the applicant represents that the proposed housing program will provide 30 percent of the units for homeless grandparents raising children and 70 percent for other low-income senior citizens, and was designed in collaboration with New York City's Housing Development Corporation (HDC) and Department of Housing Preservation and Development, and the New York State Homeless Housing Assistance Program (HHAP); and

WHEREAS, further, the applicant represents that design includes access to the onsite community facility with social service programming; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties

and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the site is occupied by an historic structure, under the jurisdiction of LPC, the exterior of which cannot be altered or demolished; and (2) the subsurface of the site has an irregular rock composition and significant slope; and

WHEREAS, the applicant asserts that the existence of the historic structure on the site hinders as of right development in two primary ways: (1) its orientation at an angle in relationship to the street results in constraints on design options; and (2) because of its landmark status, floor area may not be constructed above it; and

WHEREAS, these two restraints necessitate the shift of the new building's bulk to other parts of the site unoccupied and not affected by the historic structure; and

WHEREAS, this results in the need for some of the cited waivers; and

WHEREAS, specifically, because the new building must avoid the diagonally-positioned historic structure and leave an area in front for a forecourt to allow for its visibility from Beck Street, an irregularly-shaped courtyard, without the required 30 ft. depth, is formed; hence, courtyard relief is necessary; and

WHEREAS, additionally, in order to keep the Beck Street portion of the building low, to match adjacent townhouses, the bulk of the building, which normally could be distributed over the entire site, now is situated primarily along 156th and Fox Streets; and

WHEREAS, this results in a non-complying wall height and total height, and the inability to provide a required setback; hence, waivers for these three provisions are necessary as well; and

WHEREAS, the proposed building will also be situated in relation to the existing structure such that there will be a range of distances between windows and walls, with a depth at one point of 15'-7"; since this depth is non-complying, a waiver of the minimum distance requirements is also necessary; and

WHEREAS, as to floor area, the applicant notes that in order to qualify for funding from HDC, HHAP and other city, state, and private sources, the applicant must provide a minimum of 95 apartments; and

WHEREAS, creating 95 livable apartments requires a certain amount of floor area; and

WHEREAS, further complicating matters is the site's unique subsurface condition; and

WHEREAS, specifically, the applicant cites to a geotechnical report that reflects an uneven distribution of subsurface rock formation and a drop in slope of ten feet along 156th Street, from Beck Street to Fox Street; and

WHEREAS, due to the unique subsurface conditions, it is cost-prohibitive to excavate a full cellar; and

WHEREAS, thus, program functions that could have been placed in the cellar are now above grade and count as floor area; this fact, along with the need to create a minimum of 95 units, necessitates the floor area waiver; and

WHEREAS, finally, the parking waiver is also a result of the subsurface conditions combined with MiCasa's

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programmatic needs; and

WHEREAS, specifically, the difficulty of constructing a cellar eliminates the possibility of constructing a below grade parking lot, and use of the basement or first floor for parking would significantly diminish the amount of space at those levels for the ancillary programs; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of MiCasa's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the proposed eight-story street wall without a setback is compatible with the seven-story multi-family building adjacent to the site on Fox Street, and with the numerous five, six, and seven-story multi-family buildings along Fox Street, 156th Street, Legget Street, and Southern Boulevard; and

WHEREAS, the applicant asserts that the open space around the historic structure would maintain its visibility and contribute to the character of the surrounding historic district; and

WHEREAS, the applicant further asserts that the resulting courtyard depths and window to wall distances allow for considerable landscaped open space that would also contribute to the character of the neighborhood; and

WHEREAS, the Board also notes that LPC determined that the proposed development will not alter the historic character of the neighborhood and issued the applicant a Certificate of Appropriateness ("C of A") for the proposal; in its report, LPC noted characteristics such as floor to ceiling heights that are proportional to those of adjoining buildings and the harmonious transition to neighboring row houses; and

WHEREAS, finally, as to parking, the applicant asserts that because the future residents will qualify as low-income and the vast majority will be elderly, substantial car ownership is not anticipated and the absence of the 14 required spaces will not have a negative impact on the character of the neighborhood; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the subject site is located within the Longwood Historic District (and Extension) and as previously noted in this resolution, a C of A has been issued for this proposal by the LPC on December 15, 2005; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.06BSA052X, dated February 22, 2006.

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, LPC has reviewed an Environmental Assessment Statement Form, dated April 2, 2004; and

WHEREAS, based on its review of archaeological sensitivity models and historic maps, LPC has determined that there is the potential presence of archaeological resources on the site, including the potential for the recovery of remains from 19th century occupation of the Site; and

WHEREAS, LPC requested that the applicant prepare an archaeological documentary study to clarify these initial findings; and

WHEREAS, the applicant decided to prepare a restrictive declaration that would incorporate conditions designed to address these archaeological concerns; and

WHEREAS, this restrictive declaration was executed on April 7, 2006 and recorded on April 19, 2006; and

WHEREAS, LPC has determined that there will not be any impacts from the subject proposal, based on the implementation of the measures cited in the restrictive declaration and the applicant's compliance with the conditions noted below; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, within an R7-1 zoning district, the proposed

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construction of an eight-story plus basement residential building that exceeds the permitted FAR, wall height, and total height, and does not provide the required setback, courtyard depth, window distance from wall, and parking, contrary to ZR §§ 23-145, 23-633, 23-851, 23-861, and 25-25; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “April 27, 2006”– (16) sheets; and *on further condition*:

THAT any change in ownership, operator, or control shall require the prior approval of the Board;

THAT the above condition shall be listed on the certificate of occupancy;

THAT the applicant or any successor in title will adhere to all requirements for archaeological identification, investigation, and mitigation as set forth in the CEQR Technical Manual and LPC’s Guidelines for Archaeological Work in NYC, including without limitation, the completion of an archaeological documentary study, archaeological field testing, excavation, mitigation, curation of archaeological resources, and a final archeological report, as required by the LPC, and as memorialized in the restrictive declaration executed on October 18, 2005 (collectively, the “Archaeological Work”);

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the Archaeological Work to the satisfaction of LPC and submit a written report that must be approved by LPC; the only exception to this condition shall be those soil disturbing activities necessitated by the applicant’s performance of the Archaeological Work required for LPC’s approval (such as archaeological “pits”) that may require a DOB permit;

THAT any DOB permit issued for soil disturbing activities pursuant to this exception shall clearly state on its face that such soil disturbance is limited to that necessary to perform the mandated archaeological work;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the Chairperson of LPC shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Archaeological Work has been completed to the satisfaction of LPC;

THAT the parameters of the proposed building shall be as follows: a residential FAR of 4.12; a total floor area of 89,850 sq. ft., a residential floor area of 82,447 sq. ft.; a community facility floor area of 7,403 sq. ft.; a total FAR of 4.49; a residential FAR of 4.12; a community facility FAR of .37; a street wall height of 78 feet; and a total height of 78 feet (without bulkhead);

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2006.

47-05-BZ

APPLICANT – Cozin O’Connor, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 – Under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Howard B. Hornstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 13, 2006, at 1:30 P.M., for decision, hearing closed.

52-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Coptic Orthodox Church of St. George, owner.

SUBJECT – Application March 4, 2005 – under Z.R. §72-21 proposed development of a six-story and cellar building, with community use on floors one through three, residential use on floors three through six, and with parking in the cellar, located in a C1-2 within an R5 zoning district.

PREMISES AFFECTED – 6209 11th Avenue, northeast corner of 63rd Street, Block 5731, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for decision, hearing closed.

132-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sami Alboukai,

MINUTES

owner.

SUBJECT – Application May 26, 2005 – Under Z.R. §73-622 to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per ZR 23-141, a rear yard less than the minimum per ZR 23-47 and a perimeter wall height greater than the maximum per ZR23-31. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 220 West End Avenue, west side of West End Avenue between Oriental Boulevard and Esplanade, Block 8724, Lot 158, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

182-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4 Park Avenue Associates, owner.

SUBJECT – Application August 4, 2005 – Under Z.R. §73-36 to allow the legalization of a physical culture establishment in a C5-3 zoning district.

PREMISES AFFECTED – 4 Park Avenue, between East 33rd and East 34th Streets, Block 863, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for continued hearing.

297-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Vestry Acquisition, LLC, owner.

SUBJECT – Application September 30, 2005 – Zoning Variance (use) pursuant to ZR §72-21 to allow a proposed nine (9) story residential building containing seven (7) dwelling units and eight (8) accessory parking spaces located in an M1-5 district (Area B2) of the Special Tribeca Mixed Use District; contrary to ZR§42-00, §111-104(b) and §13-12.

PREMISES AFFECTED – 33 Vestry Street, located on the southerly side of Vestry Street, 100’ west of Hudson Street, Block 219, Lot 18, Borough of Manhattan

COMMUNITY BOARD#1M

APPEARANCES –

For Applicant: Eric Palatnik and Winica Dubbeldam.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

314-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Mouhadeb, owner.

SUBJECT – Application October 25, 2005 – Special Permit Z.R. §73-622 for an enlargement to a single family residence

which proposed an increase in the degree of non-compliance with respect to floor area ratio and open space/lot coverage as per ZR23-141b, less than the total required side yards as per ZR23-361a and a rear yard less than the required rear yard as per ZR 23-47. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 1670 East 23rd Street, East 23rd Street between Avenue P and Quentin Road, Block 6785, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

339-05-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, Inc., owner.

SUBJECT – Application November 25, 2005 – Under Z.R. §72-21 – To permit the proposed construction of a Yeshiva and is contrary to Z.R. Sections 33-121 (floor area) and 33-441 (front setbacks).

PREMISES AFFECTED – 3574 Nostrand Avenue, south side of Nostrand Avenue, north of Avenue W, Block 7386, Lot 131, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik,.

For Opposition: Mark Schips, Arlene Resman, George Kapsi, and others.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

4-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Isaac Tessler and Miriam Tessler, owners.

SUBJECT – Application January 5, 2006 – Special Permit Z.R. §73-622 for an enlargement of an existing single family residence to vary ZR§23-141 for open space and floor area and 23-47 for less than the minimum rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1435 East 21st Street, East 21st Street between Avenue M and Avenue N, Block 7657, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to June 13, 2006, at 1:30 P.M., for continued hearing.

28-06-BZ

MINUTES

APPLICANT – Harold Weinberg, P.E., for Moshe Plutchok, owner.

SUBJECT – Application February 16, 2006 - Special Permit, ZR 73-622 for the enlargement of an existing single family home which seeks to vary ZR 23-141 for increase in floor area, lot coverage and open space ratio, ZR 23-461 for side yards and ZR 23-47 for less than the required rear yard. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 158 Beaumont Street, west side, 300' north of Oriental Boulevard, between Oriental Boulevard and Hampton Avenue, Block 8733, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E..

ACTION OF THE BOARD – Laid over to May 16, 2006, at 1:30 P.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: 3:30P.M.

BULLETIN

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May 19, 2006

DIRECTORY

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SATISH BABBAR, *Vice-Chair*

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CHRISTOPHER COLLINS

Commissioners

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84-06-BZY

1472 East 19th Street, Between Avenue N and Avenue O, Block 6756, Lot 36, Borough of **Brooklyn, Community Board: 14**. Extension of Time-11-331-To complete construction for a minor/major development for a period of six months.

85-06-BZY

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86-06-BZ

145-70 Guy R. Brewer Boulevard, Northwestern corner of intersection btwn Guy Brewer and Farmers Boulevards, Block 13309, Lot 36, 42, 44, Borough of **Queens, Community Board: 13**. Under 72-21 to permit tire sales establishment, and under 73-44 special permit for reduction in required off-street parking.

87-06-A

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88-06-A

131-04 40th Road, South side of 40th Road, 450 feet west of intersection with College Point Boulevard, Block 5060, Lot 71, Borough of **Queens, Community Board: 7**. General City Law Section 35.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 20, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 20, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

393-66-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Athena Properties, owner; Ace Dropcloth Co., lessee.
SUBJECT – Application May 2, 2006 – Application for a waiver of the Rules and Procedure and an extension of time to obtain a certificate of occupancy.
PREMISES AFFECTED – 453 East Tremont Avenue, East Tremont Avenue and Washington Avenue, Block 3034, Lot 52, Borough of The Bronx.

COMMUNITY BOARD #6BX

169-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for ZKZ Associates, LP., owner; TSI West 80 Inc., dba New York Sports Club, lessee.
SUBJECT – Application October 21, 2005 - Pursuant to ZR73-36 for the Extension of Term for a Physical Culture Establishment (New York Sports Club) which expired on May 17, 2004.

PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #7M

227-98-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for 41st Street Realty, LLC, owner; Gem Foods of Brooklyn, lessee.
SUBJECT – Application July 19, 2005 – Extension of term of a Special Permit for an eating and drinking establishment with an accessory drive-through facility. The premise is located in a C1-3(R-6) zoning district.

PREMISES AFFECTED – 41-01 4th Avenue, aka 400 41st Street, southeast corner of 4th Avenue and 41st Street, Block 719, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #7BK

SLG Graybar Sublease, LLC., owner; Equinox 44th Street Inc., lessee.

SUBJECT – Application November 2, 2005 - Pursuant to ZR73-11 and ZR73-36 Amendment to a previously granted Physical Culture Establishment (Equinox Fitness) for the increase of 4,527 sq.ft.in additional floor area.

PREMISES AFFECTED – 420 Lexington Avenue, 208’ - 4” north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

112-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Doris Laufer, owner.

SUBJECT – Application May 15, 2006 - Pursuant to ZR72-01 and 72-21 for an Extension of Time to obtain a Certificate of Occupancy which expired on November 20, 2003 for a Community Use Facility-Use Group 4 (Congregation Noam Emimelech) and an Amendment that seeks to modify the previously approved plans for floor area/FAR- ZR24-11, front wall height-ZR24-521, front yard-ZR24-31, side yard-24-35, lot coverage-ZR24-11 & ZR23-141(b) and off-street parking requirement for dwelling units-ZR25-22.

PREMISES AFFECTED – 102 & 1406 59th Street, Block 5713, Lots 8 &10, Borough of Brooklyn.

COMMUNITY BOARD #12BK

121-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Harbor Associates, owner.

SUBJECT – Application November 2, 2005 - Pursuant to ZR 73-11 for the proposed Extension of Term of Special Permit and Extension of Time to obtain a Certificate of Occupancy for a Physical culture Establishment (Harbor Fitness Club) which expired on January 1, 2006 is contrary to ZR32-10.

PREMISES AFFECTED – 9215 4th Avenue, aka 9216 5th Avenue, south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEALS CALENDAR

197-00-BZII

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for

89-06-A

CALENDAR

APPLICANT – Gary Lenhart, R.A., for the The Breezy Point Cooperative, owner; Noreen & Vincent Reilly, lessees.

SUBJECT – Application May 9, 2006 - Proposal to permit reconstruction and enlargement of an existing single family dwelling not fronting a mapped street is contrary to Section 36, Article 3 of the General City Law. Premises is located within the R-4 Zoning District.

PREMISES AFFECTED – 19 Beach 220th Street, 89.37, north of 4th Avenue, Block 16350, Lot 400, Rockaway Point, Borough of Queens.

COMMUNITY BOARD #14Q

356-05-A

APPLICANT – The Law Office of Fredrick A. Becker, for Structures LLC, owner.

SUBJECT – Application December 14, 2005 - An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning. New zoning district is R3X as of September 15, 2005.

PREMISES AFFECTED – 152 Beach 4th Street aka 1-70 Beach 4th Street, south of Seagirt Avenue, Block 15607, Lot 63, Borough of Queens.

COMMUNITY BOARD #14Q

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 20, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

338-05-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application November 25, 2005 - Special Permit ZR 73-622 to permit the proposed enlargement of an existing single family home which creates non-compliances with respect to open space and floor area, ZR23-141, less than the required side yards, ZR 23-461 and less than the required rear yard, ZR23-47.

PREMISES AFFECTED – 2224 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7374, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

358-05-BZ

APPLICANT – Sheldon Lobel, P.C., for WR Group 434 Port Richmond Avenue, LLC, owner.

SUBJECT – Application December 15, 2005 - Zoning variance pursuant to Section 72-21 to allow UG 6 commercial use (open accessory parking for retail) in an R3A zoned portion of the zoning lot (split between C8-1 and R3A zoning districts).

PREMISES AFFECTED – 438 Port Richmond Avenue, northwest corner of Port Richmond Avenue and Burden Avenue, Block 1101, Lot 62, Borough of Staten Island.

COMMUNITY BOARD #1SI

16-06-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application January 27, 2006 – Special Permit Z.R. §73-622 to permit the proposed enlargement of a one family home, which creates non-compliances with respect to open space and floor area (ZR 23-141), side yards (ZR 23-461) and rear yard (ZR 23-47).

PREMISES AFFECTED – 2253 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7375, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

26-06-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Empire Staten Island Development, LLC, owner; L. A.

JUNE 20, 2006, 1:30 P.M.

CALENDAR

Fitness International, LLC, lessee.

SUBJECT – Application February 16, 2006 - Special Permit application pursuant to Z.R. Sections 73-03 and 73-36 to operate a 51,609 square foot Physical Culture Establishment (LA Fitness) in an existing vacant one-story building. The site is located in within an existing shopping center in a M1-1 zoning district.

PREMISES AFFECTED – 145 East Service Road/West Shore Expressway, Block 2630, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #2SI

62-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Albert J and Catherine Arredondo, owners.

SUBJECT – Application April 10, 2006 - Pursuant to ZR §72-21 Variance is to allow the addition of a second floor and attic to an existing one story, one family residence. The enlargement will increase the degree of non-compliance for the rear yard, side yards and exceed the permitted floor area.

PREMISES AFFECTED – 657 Logan Avenue, west side of Logan Avenue 100' south of Randall Avenue, Block 5436, Lot 48, Borough of The Bronx.

COMMUNITY BOARD #10BX

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 9, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, March 7, 2006 as printed in the bulletin of March 16, 2006, Volume 91, No. 11. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

265-59-BZ

APPLICANT – Martyn & Don Weston, for 11 College Place, Inc., owner.

SUBJECT – Application December 12, 2005 – Extension of term for a variance to permit an eight car garage located in a residential building. The premise is located in an R7-1/LH-1 zoning district.

PREMISES AFFECTED – 11 College Place, west side 89'-6" north of Love Lane, Block 236, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening to extend the term, pursuant to ZR § 11-411, of the prior grant for a parking garage, which expired on December 2, 2005; and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in *The City Record*, and then to decision on May 9, 2006; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject 1,613 sq. ft. lot is located on the west side of College Place, 89.5 feet north of Love Lane, and is located within an R7-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 5, 1960, when, under the subject calendar number, the Board granted permission for a change in occupancy from a four-car garage and dwelling to an eight-car garage; and

WHEREAS, subsequently, the term has been extended by the Board at various times, most recently on April 16, 1996, for a term of ten years from the expiration of the prior grant, expiring on December 2, 2005; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon its review of the application, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on April 5, 1960, so that as amended this portion of the resolution shall read: “to permit an extension of term, for an additional period of ten years from the expiration of the prior grant, to expire on December 2, 2015; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked ‘Received December 12, 2005’-(3) sheets; and *on further condition*:

THAT the term of the grant shall expire on December 2, 2015;

THAT the condition above shall be listed on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(Alt. 170/59)

Adopted by the Board of Standards and Appeals, May 9, 2006.

1233-88-A

APPLICANT – Richard Bowers of Stadtmauer Bailkin, LLP, for Sunrise Development, owner.

SUBJECT – Application February 22, 2006 – Extension of Time/Waiver to complete construction of a five-story (with basement) residential building of senior housing (Sunrise) for an additional twenty four months which expired on October 29, 2005. The premise is located in an R3-1 (Hillside Preservation District).

PREMISES AFFECTED – 801 Narrows Road North, north side of Narrows Road, 1162.62' east of Howard Avenue, Block 631, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Richard Bowers.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

MINUTES

WHEREAS, this application is for a reopening and an extension of time to complete construction of a five-story plus basement senior residence for an additional 24 months from the last expiration date (October 29, 2005); and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in *The City Record*, and then to decision on May 9, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Chin; and

WHEREAS, on October 8, 1991, under the subject calendar number, the Board determined that the owner of the subject premises had a vested right to continue construction of a proposed eight-story apartment building; and

WHEREAS, on the following dates, the Board granted applications for a reopening and an extension of time to complete construction: February 2, 1993; March 28, 1995; February 24, 1998; and December 5, 2000; and

WHEREAS, in each grant of an extension, the Board required that construction be completed within a set amount of time, usually two years; and

WHEREAS, the applicant states that on December 17, 2002, a new owner of the property amended the proposed plans to reflect a five-story plus basement residential building, with 78 units to be used as senior housing; and

WHEREAS, on April 29, 2003, the Board again reopened the case and extended the time to complete construction of this new building for a thirty month period, expiring on October 29, 2005; and

WHEREAS, the applicant represents that certain problems arose during the construction process that have delayed completion approximately eleven months: (1) the presence of sub-surface serpentine rock, which contains naturally occurring asbestos and requires costly and time-consuming removal; (2) storm drainage requirements imposed by the City's Department of Environmental Protection (DEP), which required a redesign of the storm water system, subject to DEP's approval; and (3) increased site safety requirements imposed by the City's Fire Department, which required changes to the site plan; and

WHEREAS, the applicant represents that over 70 percent of the construction process has been completed in spite of these delays, and that construction is anticipated to be completed by December 2006; and

WHEREAS, the applicant has reviewed the claims of the applicant and finds that they are reasonable and supported by evidence in the record; and

WHEREAS, accordingly, the Board finds that the request for a further extension of time is appropriate to grant.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens and amends* the resolution to extend the time to complete construction, which expired on October 29, 2005, so that as amended this portion of the resolution shall read: "to permit an extension of the time to complete construction for an additional twenty-four (24) months from October 29, 2005, in conformance with the current approved plans submitted under Department of Buildings N.B. Application No. 500436511, *on condition*:

THAT all construction shall be completed and a certificate of occupancy shall be obtained by October 29, 2007;

THAT all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 500436511)

Adopted by the Board of Standards and Appeals, May 9, 2006.

359-02-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich, LLC, owner; Montessori School of Manhattan, LLC, lessee.

SUBJECT – Application January 17, 2006 – Reopening for an Amendment to a previous variance ZR 72-21 that allowed the operation of a school on the first floor and cellar in a six story building; a subsequent amendment in 2005 was to relocate the operation of the school from the cellar to the second floor and to maintain partial first floor operation. The current proposed amendment is to allow for the additional expansion of the school to the third floor of the building. The premise is located in an M1-5(TMU) zoning district.

PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street, west of Collister Street, Block 214, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, to permit the expansion of a pre-school currently located on the first and second floors of an existing six-story building to the third floor; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, and then to decision on May 9, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

MINUTES

WHEREAS, the subject site is a 5,000 sq. ft. lot, located on the north side of Beach Street, between Greenwich and Collister Streets, and is within an M1-5 (TMU) zoning district; and

WHEREAS, the site is currently occupied by a six-story building with warehouse and storage use in the cellar, part of the first floor, and the third through sixth floors; and

WHEREAS, on May 6, 2003, the Board granted an application pursuant to ZR § 72-21 under the subject calendar number, to permit the establishment of a pre-school (Use Group 3) on the first floor and cellar of the subject building, contrary to ZR § 42-31; and

WHEREAS, on August 23, 2005, the Board approved an amendment which allowed for the school to relocate from the cellar to the second floor and to maintain the use on the first floor; and

WHEREAS, the applicant proposes to convert warehouse space on the 5,000 sq. ft. third floor into four new classrooms; and

WHEREAS, at hearing, the Board asked the applicant about access to a second means of egress through the first floor warehouse space; and

WHEREAS, the applicant responded that there is a clear exit path through the first-floor warehouse space and that the warehouse activity in the building is very limited, with no activity during school hours; and

WHEREAS, the Board suggested that the applicant provide a clearly delineated exit path; and

WHEREAS, the applicant revised the plans to show that the exit path will be indicated by striping on the floor and will be separated from the warehouse space with stanchions or bollards; and

WHEREAS, additionally, the applicant asserts that since the original grant, the composition of the neighborhood has continued to change, and now includes even more mixed and residential uses; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on May 6, 2003, so that as amended this portion of the resolution shall read: "to permit, in an M1-5 (TMU) zoning district, the expansion of a pre-school currently located on the first and second floors of an existing six-story building, to the third floor contrary to ZR § 42-31; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received January 17, 2006'-(3) sheets, 'April 4, 2006'-(1) sheet and 'May 3, 2006'-(1) sheet; and *on further condition*:

THAT the secondary egress through the first-floor warehouse space shall be demarcated as shown on the BSA-approved plans;

THAT all egress requirements shall be reviewed by the Department of Buildings prior to issuance of any temporary or permanent certificate of occupancy;

THAT all conditions from prior resolutions not

specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 103314922)

Adopted by the Board of Standards and Appeals, May 9, 2006.

32-38-BZ

APPLICANT – Steven M. Sinacori, Esq., for 88 Third Avenue Associates, owner.

SUBJECT – Application March 21, 2006 – Reopening for an amendment to the resolution to eliminate the twenty year (20) term for the change in occupancy from Manufacturing (UG17) to Office (UG6) in a four story and cellar building located in an R-6 zoning district, as adopted by the Board of Standards and Appeals on March 16, 1993.

PREMISES AFFECTED – 88 Third Avenue, west side of Third Avenue, between Bergen and Dean Streets, Block 197, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Steven Sinacori.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for decision, hearing closed.

203-92-BZ

APPLICANT – Sullivan, Chester & Gardner, P.C., for Austin-Forest Assoc., owner; Lucille Roberts Org., d/b/a Lucille Roberts Figure Salon, lessee.

SUBJECT – Application January 26, 2005 – Extension of Term / Amendment / Waiver for a physical culture establishment. The premise is located in an R8-2 zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side, 333' west of 71st Avenue, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester and John Fox.

ACTION OF THE BOARD – Laid over to July 25, 2006, at 10 A.M., for continued hearing.

26-94-BZ

APPLICANT – Rampulla Associates Architects, for CDC

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Realty, LLC, owner.

SUBJECT – Application March 24, 2006 – Reopening for an Extension of Term for a Special Permit renewal for an eating and drinking establishment (UG6, located in a C3A zoning district.

PREMISES AFFECTED – 141 Mansion Avenue, intersection of Mansion Avenue and McKeon Avenue, Block 5201, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to June 6, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

73-05-A

APPLICANT – Ken Fisher of Wolf Block, Associates for GCC, LLC, owner.

SUBJECT – Application March 28, 2005 – Proposed construction of an industrial building, GCC Communications, which lies partially in the bed of a mapped street (125th Street) is contrary to GLC §35. Premises is located within a M3-1 zoning district and the College Point II Industrial Renewal Area.

PREMISES AFFECTED – 125-12 31st Avenue, bounded by 31st Avenue and 125th Street, Block 4381, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Kenneth Fisher.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 28, 2005, acting on Department of Buildings Application No. 402086014, reads:

“Southwest section of proposed building located within the bed of a mapped city street is contrary to Section 35 of the General City Law”; and

WHEREAS, a public hearing was held on this application on May 9, 2006, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated March 13, 2006, Community Board 7, Queens has approved this project; and

WHEREAS, the proposed development is a one story industrial building in an M3-1 zoning district, located within the

College Point II Industrial Renewal Area; and

WHEREAS, by letter dated January 9, 2006, the New York City Economic Development Corporation has approved the site plan for the proposed project, pursuant to the Fifth Amended College Point II Urban Renewal Plan (the “URP”); and

WHEREAS, by letter dated June 2, 2005, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated July 21, 2005, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated May 4, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the Board notes that its grant herein only pertains to the ability to build within the bed of a mapped street, and that all construction must conform and comply with applicable zoning regulations, as well as regulations applicable to the URP; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, February 28, 2005, acting on Department of Buildings Application No. 402086014, is modified under the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 18, 2006”–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the proposed development shall comply in all respects with the applicable requirements of the Fifth Amended College Point II Urban Renewal Plan;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 9, 2006.

144-05-BZY

APPLICANT – Alfonso Duarte, for Bel Homes, LLC, owner.
SUBJECT – Application June 9, 2005 – Proposed extension of time to complete construction pursuant to Z.R. 11-331 for two-two family attached dwellings.

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PREMISES AFFECTED – 143-53/55 Poplar Avenue, northwest corner of Parsons Boulevard, and Poplar Avenue, Block 5228, Lots 32 and 34, Flushing, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Alonso Duarte.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundations of two (2) two-family attached dwellings, located on contiguous zoning lots; and

WHEREAS, a public hearing was held on this application on January 31, 2006 after due notice by publication in *The City Record*, with continued hearings on March 7, 2006 and March 28, 2006, and then to decision on May 9, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 7, Queens, opposed the granting of any relief to the applicant, citing concerns that some work took place after hours or on weekends, which was not covered by the issued permit; and

WHEREAS, additionally, the Queens Civic Congress opposed the granting of any relief, stating that the work performed at the site did not rise to the level of substantial completion and that the owner of the site knew of the possible rezoning; and

WHEREAS, the Kissena Park Civic Association also opposed the granting of any relief, stating that the owner had not completed excavation and had not made substantial progress on foundations, both of which are required under ZR § 11-331; and

WHEREAS, the subject site consists of two adjacent zoning lots (Lots 32 and 34), located at the corner of Parsons Boulevard and Poplar Avenue; and

WHEREAS, Lot 34 corresponds to 143-53 Poplar Avenue; Lot 32 corresponds to 143-55 Poplar Avenue; and

WHEREAS, the two lots are the result of a subdivision of a larger, pre-existing lot; this pre-existing lot was formerly occupied by a single-family dwelling, which was demolished; and

WHEREAS, each zoning lot is approximately 50.45 ft. wide by 70 ft. deep; and

WHEREAS, each zoning lot is proposed to be developed with a two-story, two-family attached dwelling (with the units side by side), and a single garage and a single parking pad; and

WHEREAS, thus, on each zoning lot there will two dwelling units, for a total of four units over the entire proposed development (hereinafter, the “Proposed Development”); and

WHEREAS, on April 26, 2005, the Department of Buildings issued two permits for the Proposed Development (NB Permit No. 402096959-01 for the building on Lot 34 and

NB Permit No. 402096968-01 for the building on Lot 32); and

WHEREAS, the validity of these permits when issued has not been questioned and is not at issue in this appeal; and

WHEREAS, when these permits were issued and when construction commenced, the site was within an R3-2 zoning district; and

WHEREAS, the Proposed Development complied with the R3-2 zoning, because attached dwellings and the proposed amount of floor area and other bulk parameters were allowed; and

WHEREAS, however, on May 11, 2005 (hereinafter, the “Rezoning Date”), the City Council voted to enact the Kissena Park rezoning proposal, which changed the site’s zoning from R3-2 to R2; and

WHEREAS, in R2 zoning districts, only detached single-family dwellings are allowed; as noted above, the Proposed Development contemplates attached two-family dwellings; and

WHEREAS, additionally, the Proposed Development would not comply with R2 district provisions regarding floor area, density, lot size, side yards, and side lot line wall; and

WHEREAS, because the Proposed Development violated these provisions of the R2 zoning and work on foundations was not completed, the issued permits lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on the Rezoning Date for each of the issued permits; and

WHEREAS, the applicant now applies to the Board to reinstate the permits pursuant to ZR § 11-331; and

WHEREAS, ZR § 11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, a threshold issue in this case was the proper categorization of the Proposed Development; and

WHEREAS, ZR § 11-31(c) sets forth definitions for various types of development, including “major

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development” and “minor development”; and

WHEREAS, major development includes construction of multiple non-complying buildings on contiguous zoning lots, provided that all of the proposed buildings were planned as a unit evidenced by an approved site plan showing all of the buildings; and

WHEREAS, minor development includes construction of multiple non-conforming buildings on contiguous zoning lots, again, provided that it can be shown that the development was planned as a unit; and

WHEREAS, the applicant has submitted a DOB-approved site plan, showing that the Proposed Development was planned as a unit; however, this does not establish whether it is a major or minor development; and

WHEREAS, upon initial application, the applicant contended that the Proposed Development was a major development, noting that the two buildings would be non-complying as to the above-mentioned bulk parameters; and

WHEREAS, pursuant to ZR § 11-331, major developments may be vested upon a showing of progress on foundation construction for just one of the multiple buildings; and

WHEREAS, minor developments, however, may be vested only upon a showing of progress of foundation construction for each of the buildings; and

WHEREAS, the Board observes agrees that the Proposed Development is non-complying in terms of bulk, but also notes that that the Proposed Development contemplates attached homes, which are not permitted in R2 zoning districts pursuant to ZR § 22-00; and

WHEREAS, ZR § 22-00 is a use regulation and sets forth a chart showing permitted residential Use Groups in various zoning districts; the ability to construct an attached, detached, or semi-attached dwelling is illustrated by this chart; and

WHEREAS, Use Group 1 is limited to detached single-family homes only, pursuant to ZR § 22-10; and

WHEREAS, Use Group 2 includes all other types of residential development, including attached, semi-attached, and multiple-family dwellings; the Proposed Development contemplates Use Group 2 residences; and

WHEREAS, R2 zoning districts allow only residences listed in Use Group 1; in other words, only detached single-family homes are permitted (though Use Group 3 and 4 community facilities are also allowed under certain circumstances); and

WHEREAS, Use Group 2 residences are not permitted in R2 zoning districts; and

WHEREAS, thus, the Board disagrees with the appellant that the attached homes of the Proposed Development are merely non-complying; rather, the Board also considers the proposed attached dwellings non-conforming uses under the R2 zoning; and

WHEREAS, ZR § 12-10 defines a “non-conforming use” as “any lawful use, whether of a building or other structure . . . which does not conform to any one or more of the applicable use regulations of the district in which it is located . . . A non-conforming use shall result from failure to

conform to the applicable district regulations on . . . permitted Use Groups . . .”; and

WHEREAS, accordingly, a failure to conform with the residential Use Groups allowed in the R2 district (Use Groups 1, 3, and 4) renders the Proposed Development (Use Group 2) non-conforming by definition; and

WHEREAS, the Board observes that the ZR is structured so that use regulations are plainly distinguished and separated from bulk regulations; thus, the Board views the inclusion of provisions concerning residential building type (attached, semi-detached, detached) in the clearly delineated use regulations as an indication that they are to be treated as use regulations; and

WHEREAS, thus, the Board finds that the Proposed Development meets the definition of both minor development, since it is non-conforming as to Use Group, and major development, since it is non-complying as to floor area, density, lot size, side yards, and side lot line wall; and

WHEREAS, as noted above, the standards for a right to continue construction are different for the two categories; and

WHEREAS, since the Proposed Development meets the definition of both major development and minor development, the Board must determine which definition’s standard to apply; and

WHEREAS, the Board observes that the standard for minor development is more restrictive, in that it requires a consideration of excavation and progress on foundations for all buildings, not just one; and

WHEREAS, ZR § 11-22 provides that when two ZR provisions set forth overlapping or contradictory regulations, “that provision which is more restrictive or imposes higher standards or requirements shall govern”; and

WHEREAS, thus, it is appropriate for the Board to require that the applicant meet the more stringent standard for minor development; that is, to show that excavation had been completed and substantial progress had been made on each of the foundations, not just one; and

WHEREAS, the Board requested that the applicant revise the application to reflect that the Proposed Development is a minor development; and

WHEREAS, initially, the applicant refused, and made various submissions purportedly supporting the classification of the Proposed Development as a major development; and

WHEREAS, specifically, the applicant claimed that ZR § 11-22 was inapplicable since “use and bulk . . . are two entirely different categories that do not contradict or overlap each other; and one is not more restrictive over the other since they relate to two different criteria . . .”; and

WHEREAS, the applicant summarily concluded that since the bulk provisions are violated, the application was appropriately categorized as a major development; and

WHEREAS, the Board does not accept the applicant’s conclusion, since it has no basis in fact; and

WHEREAS, the Board finds that a provision that allows vesting upon a showing that progress has been made on just one foundation for a building in a multi-unit development constructed on contiguous zoning lots is inherently contradictory to a different provision that allows

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vesting only upon a showing that progress has been made on each foundation, where it can be shown that both provisions would apply based upon a development's non-conforming and non-complying status; and

WHEREAS, accordingly, the Board again requested that the application be revised to reflect that the Proposed Development is a minor development; and

WHEREAS, the applicant subsequently revised the application to reflect this change; and

WHEREAS, since the Proposed Development is a minor development, the Board must find that excavation was completed and substantial progress was made over the entire development site and as to each required excavation and foundation; and

WHEREAS, based upon its review of the evidence, the Board has determined that excavation was not completed; and

WHEREAS, specifically, based upon its review of pictures submitted by both the applicant and by the Kissena Park Civic Association, the Board observes that a significant portion of the site, particularly on Lot 34, was not excavated; and

WHEREAS, during the course of the hearing process, the applicant has made various arguments as to why this portion of Lot 34 remains unexcavated; and

WHEREAS, first, in the initial statement dated June 3, 2005, the applicant stated without qualification that excavation had been completed; and

WHEREAS, then, at the January 31, 2006 hearing, the applicant claimed that excavation had been completed for both sites, though some unsupported ground had "slipped down" back into the site; and

WHEREAS, subsequently, in a March 3, 2006 submission, the applicant argued that excavation was not completed because trucks needed to access the site and could not if the site was fully excavated; and

WHEREAS, however, the Board disagrees that truck access to the site would have been compromised if areas around the northern perimeter of Lot 34 were excavated; and

WHEREAS, in fact, if truck access was needed, a simple ramp into the site could have been constructed, and the remainder of the excavation could have been completed; and

WHEREAS, at the March 28, 2006 hearing, the Board asked the applicant to provide further clarification as to the completion of excavation; and

WHEREAS, in an April 26, 2006 submission, the applicant submitted a diagram purportedly showing the extent of excavation; and

WHEREAS, this diagram plainly shows that a substantial portion of Lot 34 is unexcavated; and

WHEREAS, the applicant then argued that this portion of the site was unexcavated so that the unexcavated dirt could later be used for backfill; and

WHEREAS, the Board observes that the applicant did not provide any expert evidence in support of this argument; and

WHEREAS, accordingly, the Board does not accept applicant's unsubstantiated argument, and observes that there is no legitimate construction reason to retain so much of the site as

unexcavated; and

WHEREAS, accordingly, the Board finds that excavation for the Proposed Development was not complete; and

WHEREAS, as to substantial progress on foundations, the Board observes that the only foundation work performed was on Lot 32; and

WHEREAS, the applicant's diagram also illustrate this fact; Lot 34 is labeled "Formwork not in place"; and

WHEREAS, pictures submitted by the applicant and as well as the Kissena Park Civic Association also confirm that no significant foundation work was performed on Lot 34; and

WHEREAS, thus, the only foundation work that the Board can consider is that performed on Lot 32; and

WHEREAS, the applicant alleges that the amount of foundation work performed on Lot 32 consists of: (1) footings and rebar installation for the dwellings to be constructed on Lot 32 (and a very small portion of the footings for one of the other dwellings on Lot 34); and (2) form work for the walls on Lot 32; and

WHEREAS, the applicant claims that the form work was later stolen, but did provide pictures of the site taken on the Rezoning Date that show the form work; and

WHEREAS, nonetheless, the Board observes that forms for the walls on Lot 34 were not constructed, nor was any concrete for the walls poured, on either Lot 32 or Lot 34; and

WHEREAS, the Board informed the applicant that all foundational elements that are below grade needed to be considered, including the foundation walls, and asked the applicant to analyze what remained to be constructed on the below-grade foundation elements as a whole; and

WHEREAS, the Board observes that it has previously considered foundation wall construction in the calculations of the amount of total foundation work performed; and

WHEREAS, however, the applicant failed to provide the Board with an understandable summation of the amount of work done relative to what remains, and the amount of expenditures made relative to what is outstanding, based upon the entire sub-grade foundation construction (including walls) necessary for the Proposed Development; and

WHEREAS, accordingly, because excavation was not complete and substantial progress was not made on foundations, the applicant is not entitled to relief under of ZR § 11-331; and

WHEREAS, as a final matter, the Board observes that the applicant, in a March 3, 2006 submission, claims that the owner has established vested rights under the common law; and

WHEREAS, however, the applicant has not expanded upon this assertion nor provided any evidence in support of it; and

WHEREAS, additionally, the Board notes that the subject application was brought pursuant to ZR § 11-331; the issue of common law vesting was not discussed by the applicant at hearing, nor was a formal application made for the Board's consideration of such a claim, as required by Board practice; accordingly, the Board declines to render a determination as to this claim.

Therefore it is Resolved that this application to renew NB

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Permit Nos. 402096959-01 and 402096968-01 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, May 9, 2006.

206-05-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Joanne & Thomas DeRosa, lessee.
SUBJECT – Application September 6, 2005 – Proposed construction of an existing single family frame dwelling situated in the bed of a mapped street contrary to General City Law Article 3, Section 35 and upgrading an existing private disposal system which is contrary to Department of Buildings policy. Premises is located within an R4 zoning district.

PREMISES AFFECTED – 9 Bayside Drive, in the bed of Bayside Drive 109.72 northwest of Rockaway Point Boulevard, Block 16340, part of Lot 50, Borough of Queens.

COMMUNITY BOARD#14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 24, 2005, acting on Department of Buildings Application No. 402131260, reads:

“A1 – The Existing Building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35.

A2 – The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on May 9, 2006, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated September 13 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated October 19, 2005, the Department of Environmental Protection has reviewed the above project and has no objections; and

WHEREAS, by letter dated, March 30, 2006, the Department of Transportation has reviewed he above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, August 24, 2005, acting on Department of Buildings Application No. 402131260, is modified by the

power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 6, 2005”–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 9, 2006.

30-06-A

APPLICANT – Eric Hecker, Esq. of Emery Celli, Brinkcerhoff & Abady, LLP for Lamar Outdoor Advertising, lessee; EG Clemente Bros., owner.

SUBJECT – Application February 21, 2006 – For an appeal of the Department of Buildings decision dated January 19, 2006 revoking Advertising sign approvals and permits under Application Nos. 5000684324 and 500684315 in that it allows advertising signs that are not within 1/2 mile of the NYC Boundary and as such are in violation of Section 42-55 of the Zoning Resolution.

PREMISES AFFECTED – 50 South Bridge Street, between Arthur Kill Road and Page Avenue, Block 7584, Lot 122, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to a January 19, 2006 (mistakenly dated January 19, 2005) final written determination of the Acting Staten Island Borough Commissioner (the “Final Determination”); and

WHEREAS, the Final Determination was issued in response to July 22 and September 16, 2005 letters from Lamar Outdoor Advertising (hereinafter, the “appellant”) asking the Department of Buildings (“DOB”) to rescind its intent to revoke the permits (Permit Nos. 500684315 and 500884324, hereinafter, the “Permits”) issued for advertising signs (hereinafter, the “Signs”) at the subject premises; and

WHEREAS, as reflected in the Final Determination, the

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Acting Staten Island Borough Commissioner denied this request because the Signs are not within a half-mile of the New York City boundary and are thus in violation of ZR § 42-55(a); and

WHEREAS, ZR § 42-55 provides, in pertinent part: “In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d) of this Section, shall apply for signs near designated arterial highways . . .

(a) Within 200 feet of an arterial highway . . . signs that are within view of such arterial highway . . . shall be subject to the following provisions: . . . no advertising sign shall be allowed . . .

(d) Within one-half mile of any boundary of the City of New York, permitted signs and advertising signs may be located along any designated arterial highway . . . that crosses a boundary of the City of New York, without regard to the provisions of paragraphs (a), (b) and (c) of this Section, provided any such permitted or advertising sign otherwise conforms to the regulations of this Chapter including, with respect to an advertising sign, a location not less than 500 feet from any other advertising sign, except that, in the case of any such permitted or advertising sign erected prior to August 7, 2000, such sign shall have non-conforming use status pursuant to Sections 52-82 . . .”; and

WHEREAS, generally, ZR 42-55(a) acts to prohibit signs placed within 200 feet of a designated arterial highway; and

WHEREAS, however, ZR § 42-55(d) provides an exception for signage that is placed within one-half mile of a boundary of the City of New York on a highway that crosses said boundary, so long as the sign is located at least 500 ft. from any other advertising sign; and

WHEREAS, the primary issue in the appeal is the interpretation of the phrase “boundary of the City of New York”; and

WHEREAS, a public hearing was held on this application on April 11, 2006 after due notice by publication in *The City Record*, and then to decision on May 9, 2006; and

WHEREAS, Communiquez L.L.C., the permit holder for a separate outdoor advertising sign at 100 South Bridge Street (hereinafter, the “Communiquez Sign”), made submissions and gave testimony in opposition to the appeal; and

WHEREAS, the Signs are two back-to-back advertising signs located at 50 South Bridge Street between Arthur Kill Road and Page Avenue; the site is within an M1-1 zoning district; and

WHEREAS, on March 21, 1994 and April 7, 1994, under Application Nos. 500089780 and 500089771, appellant’s predecessor in interest obtained permits for non-advertising accessory business signs; and

WHEREAS, on January 20, 2004, DOB informed the appellant that an inspection revealed that the permitted accessory signs had been converted to advertising signs without

DOB approval and that the Signs were located within 500 feet of the Communiquez Sign, which is not permitted pursuant to ZR § 42-55; and

WHEREAS, DOB requested proof that the Signs existed prior to August 7, 2000 so that they could qualify for non-conforming status under ZR § 42-55(d), despite being within 200 feet of an arterial highway; this would also determine whether the Signs had priority over the Communiquez Sign; and

WHEREAS, on April 2, 2004, DOB wrote to the appellant, stating that it was accepting evidence that the Signs had existed at the premises before August 7, 2000 and therefore were grandfathered as non-conforming signs under ZR § 42-55(d), with priority over the Communiquez Sign as to the 500 ft. distance between signs rule; and

WHEREAS, on April 12, 2004, appellant filed Application Nos. 500684315 and 500684324, and DOB subsequently issued the Permits to convert the permitted accessory signs to advertising signs; and

WHEREAS, on May 5, 2004, upon review of a survey performed for the owner of the Communiquez Sign by Rogers Surveying (the “Rogers Survey”), DOB notified the appellant that the Signs were not within a half-mile boundary of the City of New York and therefore could not be grandfathered under ZR § 42-55(d); and

WHEREAS, DOB noted that if the Signs were not “[w]ithin one-half mile of any boundary of the City of New York,” as specified by ZR § 42-55(d), then they were in violation of ZR § 42-55(a), and thus could not be deemed grandfathered; and

WHEREAS, the appellant responded with a claim that, in accordance with ZR § 76-145, the “boundary of the City of New York” as that phrase is used in ZR § 42-55(d), is the pierhead line, and that the Signs were within a half-mile of the pierhead line; and

WHEREAS, ZR § 76-145, reads, in pertinent part; “In cases of . . . navigable waters, the boundary line shall (unless otherwise fixed) be considered to coincide with the boundary line of . . . the pierhead line . . .”; and

WHEREAS, on September 9, 2004, DOB replied to the appellant that ZR § 76-145 referred to zoning district boundary lines and not City boundaries, was therefore inapplicable to ZR § 42-55(d); and

WHEREAS, in making this response, DOB stated it was relying upon the Rogers Survey, which showed the City boundary line as the border between the City and the State of New Jersey, situated in the middle of the Arthur Kill River, as established by the United States Army Corps of Engineers (the “U.S. A.C.E.”); and

WHEREAS, DOB noted that the Signs were not within one half mile of this City boundary; and

WHEREAS, accordingly, on June 6, 2005, DOB issued an intent to revoke the Permits, because the Signs did not comply with the half-mile requirement of ZR § 42-55(d); and

WHEREAS, in the Final Determination, DOB subsequently revoked the Permits, again citing the established City boundary line as reflected on the Rogers Survey; and

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WHEREAS, the appellant now challenges DOB's Final Determination and the revocation of the Permits, and restates the argument that the boundary of the City of New York is, pursuant to ZR § 76-145, the equivalent of the pierhead line and that since the Signs are within a half mile of the pierhead line, they comply with the requirements of ZR § 42-55; and

WHEREAS, thus, the appellant asks the Board to consider the argument rejected by DOB, that the one-half mile measurement may be taken from the pierhead line; and

WHEREAS, DOB maintains its position stating that the conventional standard used to identify the City boundary line has been established by the U.S. A.C.E. to be the center of the Arthur Kill River; and

WHEREAS, DOB additionally cites to New York City Administrative Code, Title 2, Chapter 2 "Boundaries of the City," Section 2-202, Paragraph 5, which recognizes that a boundary of Staten Island is the state boundary line, as well as Section 7 of the State Law of New York which identifies the boundary line between New York State and New Jersey as the middle of the Arthur Kill River; and

WHEREAS, DOB argues that when the Administrative Code and the State Law are considered together, one must conclude that the City boundary is coincident with the State boundary, which is established by law to be the center of the Arthur Kill River; and

WHEREAS, the U.S.A.C.E.-identified City boundary line, as reflected on the Rogers Survey, reinforces this conclusion; and

WHEREAS, DOB notes that the appellant's own survey, prepared by Wohl & O'Mara, indicated only the location of the pierhead line and not that of the City boundary, and did not claim that the two were coincident; and

WHEREAS, the Board notes that DOB's claim that the Signs are not within the required half-mile from the City boundary as defined by the U.S. A.C.E. has not been disputed by the appellant; and

WHEREAS, as to ZR § 76-145, DOB notes that this provision is part of ZR Chapter 6: "Location of District Boundaries", which is a chapter regulating zoning district boundary lines rather than City boundaries; and

WHEREAS, ZR § 76-145 is a rule of construction that specifies that park, pierhead, or cemetery boundary lines may be construed to be zoning district boundaries; and

WHEREAS, 76-145 is one of eight rules of construction set forth in Chapter 6, and all of them concern zoning district boundaries on the zoning maps; and

WHEREAS, the Board observes that ZR 76-11 "General Provisions", provides that "The *district* boundaries on the zoning maps shall be interpreted in accordance with the provisions of . . . 76-14 (Additional Rules of Construction)"; and

WHEREAS, ZR § 76-145 is one of the "Additional Rules of Construction"; and

WHEREAS, thus, it is illogical to argue, as appellant has, that 76-145 modifies the phrase "boundary of the City of New York" as used in ZR § 42-55(d), when the provision

plainly is a rule of construction concerning zoning district boundaries; and

WHEREAS, accordingly, the Board agrees with DOB that the pierhead line is not relevant when determining whether the signs comply with the one-half mile requirement of ZR § 42-55; and

WHEREAS, instead, the Board agrees that the City boundary is established by laws other than the ZR and has been correctly confirmed on the Rogers Survey as the U.S. A.C.E.-identified boundary line in the middle of the Arthur Kill River; and

WHEREAS, since the appellant does not contest that the Signs are not within one half mile of the City boundary line, the Board concludes that DOB's revocation of the Permits as set forth in the Final Determination is a proper exercise of its authority and should therefore be sustained; and

WHEREAS, accordingly, the Board finds that the subject appeal is without merit and should be denied; and

WHEREAS, subsequent to the Final Determination, DOB responded to the Communiquez's arguments regarding sign height and size, set forth in a submission to the Board; and

WHEREAS, however, the Board notes that these issues are not subject to the Final Determination and are therefore not properly before the Board in the instant appeal.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Acting Staten Island Borough Commissioner, dated January 19, 2006, revoking DOB Permit Nos. 500684315 and 500884324, is hereby denied.

Adopted by the Board of Standards and Appeals, May 9, 2006.

222-04-A thru 224-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, & Spector, LLC for Dalip Karpuzi, owner.

SUBJECT – Application June 1, 2004 – to permit construction of a three one family dwellings in the bed of a final mapped street (Pemberton Avenue) contrary to Article 3, Section 35 of the General City Law. Premises is located within an R3-1 (SRD) Zoning District.

PREMISES AFFECTED – 486 Arthur Kill Road, and 120, 122 Pemberton Avenue, Block 5450, Lots 37, 35 and 36, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

MINUTES

ACTION OF THE BOARD – Laid over to June 13, 2006, at 10 A.M., for continued hearing.

370-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg & Spector, LLC for Edgewater Developers and Builders. Inc., Owner.
SUBJECT – Application November 23, 2004 – to permit construction of a one family dwelling in the bed of a final mapped street (Egdewater Road) contrary to Article 3, Section 35 of the General City Law. Premises is located within an R2 Zoning District.

PREMISES AFFECTED – 1511 Egmont Place, north side of Egmont Place 705.9 ft east of Mott Avenue, Block 15685, Lot 48, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to June 13, 2006, at 10 A.M., for continued hearing.

134-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Gaspare Colomone, owner.

SUBJECT – Application May 31, 2005 – Proposed construction of a three dwellings, which lies in the bed of a mapped street (67th Street) which is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 53-31 67th Street, 53-33 67th Street, and 67-02 53rd Road, Block 2403, Lot 117, 217, 17, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for continued hearing.

153-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for MSP Development, owner.

SUBJECT – Application filed on June 28, 2005 – Proposed construction of a two family homes, which lies in the bed of a mapped street (141st Avenue) which is contrary to Section 35 of the General City Law. Premises is located in R3-2 zoning district.

PREMISES AFFECTED – 222-50 and 222-54 141st Avenue, Block 13149, Lot 148, 48, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 13, 2006, at 10 A.M., for continued hearing.

294-05-A thru 296-05-A

APPLICANT – Rothkrug RothkrugWeinberg & Spector, LLP for Pleasant Place, LLC, owner.

SUBJECT – Application September 29, 2005 – Proposed construction of three two- family homes not fronting on a mapped street is contrary to GCL 36, Article 3. Current R3-2 Zoning District.

PREMISES AFFECTED – 146-34, 36, 38 Pleasant Place, Queens, West side of Pleasant Place, 100ft north of intersection with 146th Drive, Block 13351, Tentative Lot #s 100, 101, 103, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 6, 2006, at 10 A.M., for decision, hearing closed.

372-05-BZY & 373-05-BZY

APPLICANT – Adam Rothkrug, for Woodrow Estates North LLC, owner.

SUBJECT – Application December 27, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. §11-332. Prior R4 Zoning District. Current R3-A (HS) Zoning District.

PREMISES AFFECTED – 28 Webster Avenue (aka 101 Stanley Avenue) Block 111, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 13, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, MAY 9, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

229-04-BZ

MINUTES

APPLICANT – Eric Palatnik, P.C., for Absolute Power & Fitness Center, Inc., owner.

SUBJECT – Application June 16, 2004 – Under Z.R. §72-21 – the legalization of an existing physical cultural establishment, occupying approximately 8000 square feet of floor area spread over two stories, located in an R-5 (OPSD) zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 202/04 Caton Avenue, between East 2nd and East 3rd Streets, Block 5325, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 17, 2004, acting on Department of Buildings Application No. 301773249, reads, in pertinent part:

“Proposed Physical Culture Establishment is not permitted as of right within R5(OP Special District) and is contrary to ZR Section 22-00 . . .”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district within the Special Ocean Parkway Subdistrict (OP), the legalization of a physical culture establishment (PCE) located in an existing two-story commercial building; and

WHEREAS, a public hearing was held on this application on February 28, 2006 after due notice by publication in *The City Record*, with continued hearings on April 11, 2006, and then to decision on May 9, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioners Chin and Collins; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the site is a 4,000 sq. ft. lot located on the southeast corner of Caton Avenue and Second Street; and

WHEREAS, the existing building has 8,000 sq. ft. of floor area, all of which is currently occupied by the PCE (the Absolute Power Fitness Center); and

WHEREAS, the existing building was previously occupied by a Use Group 16 carpet cleaning establishment, subject to a previous variance granted under BSA Cal. No. 841-48-BZ; and

WHEREAS, the applicant states that the building was later occupied as a roofing, storage facility, and construction office, and then fell vacant until purchased by the Absolute Power Fitness Center; and

WHEREAS, since a PCE is not permitted in an R5 zoning district, a variance is required; and

WHEREAS, the applicant states that the following is a

unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: the site is improved upon with an obsolete industrial structure that was designed for, and historically has been occupied by, non-conforming uses; and

WHEREAS, as noted above, the building was occupied as a factory prior to 1948, and, pursuant to a Board grant, as a UG 16 carpet cleaning establishment and storage and construction office since 1948; and

WHEREAS, the applicant discussed previous Board cases where the Board has approved variances for PCEs that occupy non-conforming commercial buildings, where the existing non-conforming building was cited as the unique physical condition giving rise to unnecessary hardship; and

WHEREAS, the applicant states that the instant case is comparable to these approvals; and

WHEREAS, the Board observes that the design of the existing building for commercial use is a condition which prevents a feasible conversion to conforming residential use, due to increased construction costs, as discussed below; and

WHEREAS, based on the above, the Board finds that there are unique physical conditions inherent to the site, which create an unnecessary hardship in conforming strictly with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that developing the building with a conforming use would not yield the owner a reasonable return; and

WHEREAS, specifically, this study showed that due to the fact that the building was designed for and has been occupied by commercial uses since at least 1948, as of right residential or community facility scenarios would produce only negligible returns due to the significant demolition and construction costs and the modest rents that could be realized; and

WHEREAS, these costs include expenditures for base construction, HVAC equipment, and installation of windows, as well as the removal of approximately 1,400 sq. ft. of floor area from the building to comply with the residential FAR maximum of 1.65 and to allow for light and air; and

WHEREAS, these costs and the diminution in the amount of usable floor area render a residential scenario infeasible; and

WHEREAS, additionally, the feasibility study analyzed a conforming community facility scenario, which was also determined to be infeasible due to the excessive costs of construction for the conversion; and

WHEREAS, the Board observes that a ground up residential development involving the demolition of the existing building would not be feasible, given that the costs of demolition and new construction would not be offset by the rents that could be gained from such construction; and

WHEREAS, based upon the above, the Board has determined that because of the subject site’s unique physical condition, there is no reasonable possibility that development in strict compliance with applicable zoning provisions will provide

MINUTES

a reasonable return; and

WHEREAS, further, the Board observes that without the variance, the building would likely remain vacant, given its apparent lack of desirability for other commercial uses; and

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood, impair appropriate use or development of adjacent property or be detrimental to the public welfare; and

WHEREAS, the applicant states that the PCE will occupy a building that has historically been occupied by commercial and manufacturing uses; and

WHEREAS, the Board also observes that the PCE use is more compatible with the character of the neighborhood than the prior uses; and

WHEREAS, the applicant states that the height of the two story structure is compatible with the existing six and seven story multiple dwellings in the immediate vicinity; and

WHEREAS, further, the applicant notes that none of the OP regulations, which concern the existing scale and character of the community, among other things, are violated by the proposed variance; and

WHEREAS, as to parking, the applicant states that the PCE is not expected to result in significant impacts, and has submitted a modal split parking analysis that concludes that only approximately 12 patrons per day will arrive via car, with the overwhelming majority arriving by foot or public transportation; and

WHEREAS, the parking analysis also shows that there is sufficient available on-street parking to accommodate the anticipated parking demand generated by the PCE; and

WHEREAS, additionally, the PCE is intended to be a neighborhood gym, and will likely not draw significant patronage from outside the area; accordingly, significant visitation by car is not anticipated; and

WHEREAS, the hours of operation for the PCE are 5 a.m. to 10 p.m. Monday thru Friday, and 8 a.m. to 8 p.m. Saturday and Sunday; the Board finds these hours reasonable; and

WHEREAS, finally, the Board, through a condition in this resolution, will limit signage to one non-illuminated sign fronting on Caton Avenue, with

WHEREAS, at the request of the Board, the applicant modified the proposed plans to show the sign; said sign will be 8'-6" in length and 1'-6" in height; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the Board notes that although a variance is being requested, the subject application meets all of the

requirements of the special permit for a PCE, except for the required zoning district; and

WHEREAS, the PCE will contain facilities for classes, instruction and programs for physical improvement, bodybuilding, weight reduction and aerobics; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the Absolute Power Fitness Center and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR 04-BSA-215K dated December 23, 2005 and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.4, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit, in an R5(OP) zoning district, the legalization of a physical culture establishment located in an existing two-story commercial building; *on condition* that all work shall substantially conform to drawings, filed with this application marked "Received April 25, 2006" - (6) sheets; and *on further condition*:

THAT the term of this variance will be ten years from November 1, 2003, to expire on November 1, 2013;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 5 a.m. to 10 p.m. Monday thru Friday, and 8 a.m. to 8 p.m. Saturday and Sunday;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT only one non-illuminated accessory business sign shall be permitted, with dimensions and location as illustrated on the BSA-approved plans;

MINUTES

THAT all other aspects of the sign shall comply with regulations applicable in C1-1 zoning districts;

THAT all fire protection measures, including, but not limited to, an interior fire alarm system, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 9, 2006.

260-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Leewall Realty by Nathan Indig, owner.

SUBJECT – Application July 20, 2004 – under Z.R. §72-21 to permit the proposed construction of a four story, penthouse and cellar three-family dwelling, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 222 Wallabout Street, 64’ west of Lee Avenue, Block 2263, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman and Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for decision, hearing closed.

262-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tishrey-38 LLC by Malka Silberstein, owner.

SUBJECT – Application July 22, 2004 – under Z.R. §72-21, to permit the proposed construction of a four story, penthouse and cellar four-family dwelling, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 218 Wallabout Street, 94’ west of Lee Avenue, Block 2263, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman and Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for decision, hearing closed.

89-05-BZ

APPLICANT – Stadtmauer Bailkin, LLP (Steven M. Sinacori, Esq.) for 18 Heyward Realty, Inc., owner.

SUBJECT – Application April 12, 2005 – under Z.R. §72-21 to allow an enlargement of the rear portion of an existing five-story community facility/commercial building; site is located in an R6 district; contrary to Z.R. §24-11, §24-37 and §24-33.

PREMISES AFFECTED – 18 Heyward Street, Heyward Street, between Bedford and Wythe Avenues, Block 2230, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

128-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yisroel Y. Leshkowitz & Esther S. Leshkowitz, owner.

SUBJECT – Application May 24, 2005 – under Z.R. §73-622 – to permit the proposed enlargement of an existing single family residence, located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and rear yard, is contrary to Z.R. §23-141, §23-461 and §23-47.

PREMISES AFFECTED – 1406 East 21st Street, between Avenue “L” and “M”, Block 7638, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

151-05-BZ

APPLICANT – The Law Office of Frederick A. Becker for 100 Varick Street, LLC, Owner.

SUBJECT – Application June 16, 2005 – Zoning Variance (use) pursuant to Z.R. §72-21 to allow a proposed ten (10) story residential building containing seventy-nine (79) dwelling units located in an M1-6 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 100 Varick Street, located on the easterly side of Varick Street between Watts and Broome Streets, Block 477, Lots 35 and 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker, Michael Even and Peter Bergman.

MINUTES

For Opposition: David Reck and Sheila Pozon.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

11-06-BZ

APPLICANT – The Law Office of Frederick A. Becker for Miriam Schubert and Israel Schubert, owner.

SUBJECT – Application January 18, 2006 – Under Z.R. §73-622 to permit the enlargement to an existing single family residence, located in an R-2 zoning district, which do not comply with the zoning requirements for floor area ratio, open space ratio and rear yard (Z.R. §23-141 and §23-47).

PREMISES AFFECTED – 1245 East 22nd Street, East 22nd Street between Avenue K and Avenue L, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

15-06-BZ

APPLICANT – Eric Palatnik, PC for the Yeshiva Tifereth Moshe, Owner.

SUBJECT – Application January 26, 2006 – Zoning Variance (bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the construction of a new yeshiva located in an R4 zoning district. The proposed variance would allow modifications of zoning requirements for lot coverage, side yards, rear yard and height and setback; contrary to Z.R. §§ 24-11, 24-35, 24-36, 24-521 and 24-551.

PREMISES AFFECTED – 147-22 73rd Avenue located on the south side of 73rd Avenue between 147th and 150th streets (Block 6682, Lots 11 and 13), Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik, Mark Mariscal and Don Goldschein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 13, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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Volume 91, Nos. 21-22

May 26, 2006

DIRECTORY

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Tuesday, May 16, 2006**

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DOCKETS

New Case Filed Up to May 16, 2006

89-06-A

19 Beach 220th Street, East side of Beach 220th Street, 89.37' North of 4th Avenue, Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3-Proposed to permit reconstruction and enlargement of an existing single family dwelling.

90-06-A

9 Bedford Avenue, North side of Bedford Avenue at the intersection of mapped Bayside Drive & Beach 202nd Street, Block 16350, Lot 300, Borough of **Queens, Community Board: 14**. General City Law Section 35-Proposal to permit reconstruction and enlargement of an existing one family dwelling located in the bed of a mapped street

91-06-A

38 Lincoln Walk, West side of Lincoln Walk, 120.5' North of Breezy Point Boulevard, Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 35 - Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of a mapped street

92-06-A

5 Lockman Place, South side of Lockman Place, 123.17' off the intersection of Lockman Place and Lockman Avenue, Block 1236, Lot 122, Borough of **Staten Island, Community Board: 1**. General City Law Section 36-Proposed construction of a two story / two family detached not fronting on a mapped street. Premises is located within R3A Zoning District.

93-06-A

50-08 88th Street, Westerly side of 88th Street south of 50th Avenue, Block 1835, Lot 36, Borough of **Queens, Community Board: 4**. General City Law Section 36 - Permit construction of a building complying with all zoning regulations except fronting a mapped street

94-06-BZ

1221 East 29th Street, East side of East 29th Street, 150' South of Avenue L, Block 7647, Lot 37, Borough of **Brooklyn, Community Board: 14**. Under 73-622 to permit construction of a three story enlargement to a detached single family residence.

95-06-BZ

413-419 West 14th Street, Midblock of 14th and 15th Streets, between Eighth and Ninth Avenues, Block 712, Lot 14, 21, 51, Borough of **Manhattan, Community Board: 4**. Under 72-21 to permit 56 dwelling units through construction of a new mixed use building in an M1-5

96-06-BZ

39 West 56th Street, North side of 56th Street between 5th and 6th Avenues, Block 1272, Lot 14, Borough of **Manhattan, Community Board: 5**. Special Permit 73-36 To permit Physical Culture Establishment in a C5-P

97-06-BZ

153-155 Spring Street, North side of Spring between Wooster and West Broadway, frontage east side of West Broadway., Block 501, Lot 37, Borough of **Manhattan, Community Board: 2**. Special Permit-73-36-To permit the operation of a Physical Culture Establishment (spa).

98-06-BZ

1045 Beach 9th Street, South corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of **Queens, Community Board: 14**. Under 72-21-To permit the proposed four story Yeshiva.

99-06-BZ

575 Madison Avenue, East side of Madison Avenue (full blockfront) between East 56th and East 57th Streets., Block 1292, Lot 52, Borough of **Manhattan, Community Board: 5**. Special Permit-73-36-For a Physical Culture Establishment as an accessory use to a (UG6) store.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JULY 11, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 11, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

200-24-BZ

APPLICANT – Stephen Ely, for Ebed Realty c/o Ruben Greco, owner.

SUBJECT – Application May 11, 2006 - Pursuant to Rules of Practice and Procedure to reopen and amend the resolution for the Extension of Time to Obtain a Certificate of Occupancy, for a bookstore and distribution, which expired on April 12, 2006.

PREMISES AFFECTED – 3030 Jerome Avenue, aka 3103 Villa Avenue, 161.81' south of East 204th Street, Block 3321, Lot 25, Borough of The Bronx.

COMMUNITY BOARD #7BX

739-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Co., owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application May 4, 2006 – Reopening for an extension of term of a special permit pursuant to ZR§73-03 to permit an existing shopping center, the conversion of a retail store to an amusement arcade.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

45-90-BZ

APPLICANT – Walter T. Gorman, P.E., for Red Hook Land LLC, owner; Red Hook Service Station LLC, lessee.

SUBJECT – Application December 20, 2004 - Extension of Time/Waiver-To complete construction and secure a new Certificate of Occupancy

PREMISES AFFECTED – 260 Hamilton Avenue, northeast corner of Henry Street, Block 527, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

129-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Town Sports International, Inc., owner.

SUBJECT – Application September 21, 2004 - Pursuant to ZR 73-11 to re-open and amend the BSA resolution for the Extension of Term of a Physical Culture Establishment (New York Sports Club) and an Amendment to legalize modifications to the interior layout located in a five-story and cellar commercial building. This companion to BSA Cal. 130-93-BZ.

PREMISES AFFECTED – 151-155 East 86th Street, north side of East 86th Street, 62' east of Lexington Avenue, Block 1515, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

130-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 161 East 86th Street, LLC, owner; TSI East 86th Street, Inc., lessee.

SUBJECT – Application September 21, 2004 - Pursuant to ZR 73-11 to re-open and amend the BSA resolution for the Extension of Term of a Physical Culture Establishment (New York Sports Club) which occupies the fifth floor and mezzanine of a five-story commercial building. This Application is also seeking an Amendment to legalize the expansion in floor area of the P.C.E. into the third and fourth floors of the commercial building. This is companion to BSA Cal. 129-93-BZ.

PREMISES AFFECTED – 157-161 East 86th Street, north side of East 86th Street, 139' of Lexington Avenue, Block 1515, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #8M

173-95-BZ

APPLICANT – Stephen J. Rizzo, Esq., for 80 East 85th Street Company, owner; David Barton Gym Corp., lessee.

SUBJECT – Application March 10, 2006 - Pursuant to ZR 73-11 & 73-36 for the Extension of Term/Waiver of a Physical Culture Establishment (David Barton Gym) in a portion of the first floor and the entire second floor of a 30 story residential building.

PREMISES AFFECTED – 30 East 85th Street, Madison Avenue and East 85th Street, Block 1496, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #8M

324-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Janine Realty, LLC, owner.

SUBJECT – Application December 8, 2005 – Amendment to a previously granted Variance ZR72-21 to allow the conversion of three floors in a commercial building to residential use.

CALENDAR

PREMISES AFFECTED – 1077 Bay Street, Block 2825, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

JULY 11, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 11, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

131-05-BZ

APPLICANT – Law Office of Vincent L. Petraro, for Delco Properties, LLC, owner.

SUBJECT – Application Variance application under Z.R. Section 72-21 to permit a five-story retail/banquet facility/office building of 112,137 square feet and up to 276 attended parking spaces on the two cellar levels. The site is located in a C4-3 zoning district. The proposal is contrary to Z.R. Sections 33-122, 33-432, 36-21, 36-62, and 32-21. The variance waivers requested relate to floor area, front wall height, number of parking spaces, number of loading berths, and the distance from a residence district. There are two existing commercial buildings on the site which will be demolished as part of the proposed action.

PREMISES AFFECTED – 72-01/72-11 Roosevelt Avenue, 37-61/69 72nd Street and 72-18 Broadway, corner of 72nd Street and Broadway, Block 1283, Lot 72, Borough of Queens.

COMMUNITY BOARD #4Q

44-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Philip & Laura Tuffnell, owners.

SUBJECT – Application March 14, 2006 – Pursuant to ZR 72-21 Variance for the vertical enlargement of an existing single family residence which exceeds the maximum permitted floor area, ZR23-141 and does not provide the required side yard, 23-461.

PREMISES AFFECTED – 150-24 18th Avenue, South side of 18th Avenue, 215 east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

46-06-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for West 55th Street Building, LLC, owner; Club H. NY, LLC, lessee.

SUBJECT – Application March 17, 2006 – Special Permit pursuant to Z.R. Sections 73-03 and 73-36 to allow the

proposed Physical Culture Establishment on the first floor and mezzanine of the subject 12-story commercial building. The first floor and mezzanine are currently vacant. The subject premises is located in a C6-2 zoning district within the Special Clinton District.

PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

74-06-BZ

APPLICANT – Sheldon Lobel, P.C., for William Guarinello, owner.

SUBJECT – Application April 24, 2006 - Special Permit pursuant to ZR73-622 for the enlargement of single family residence which exceeds the allowable floor area ratio, lot coverage and open space as per ZR32-141, less than the minimum side yards as per ZR23-461 and less than minimum rear yard as per ZR34-47. This special permit application also purposes to convert from a one family residence to a two family residence.

PREMISES AFFECTED – 1416 80th Street, south side of 80th Street, Block 6281, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #11BK

76-06-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 150 East 58th Street, LLC/Vornado Realty, owner; Sitaras Fitness, LLC, lessee.

SUBJECT – Application April 26, 2006 – Special Permit under Z.R. §73-36 - Proposed physical cultural establishment to be located on a portion of the 11th & 12th floor of a thirty - nine story commercial building. Premises is located within an C5-2 Zoning District.

PREMISES AFFECTED – 150 East 58th Street, south side of East 58th Street, 85 feet east of the corner formed by the intersection of Lexington Avenue and East 58th Street, Block 1312, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #6M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 16, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, March 14, 2006 and Wednesday, Morning March 15, 2006, were approved as printed in the Bulletin of March 24, 2006, Volume 91, No. 12. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

636-54-BZ, Vol. II

APPLICANT – Walter T. Gorman, P.E., for Stephen & Jeanne Tamor (Trustees); Motiva Enterprises, lessee.

SUBJECT – Application February 22, 2006 - Extension of Time/Waiver to obtain a Certificate of Occupancy of a gasoline service station (Shell Station) for fifty-four (54) months from the expiration date of January 8, 2003. The premise is located in a C1-2 in R-5 zoning district.

PREMISES AFFECTED – 9612/24 Seaview Avenue, southwest corner of Rockaway Parkway, Block 8328, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to obtain a new certificate of occupancy which expired on January 8, 2003; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, and then to decision on May 16, 2006; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since October 16, 1956, when the Board granted an application to permit the erection and maintenance of a gasoline service station, with a lubritorium, auto-washing, motor vehicle repairs, storage and sale of accessories, and the storage of motor vehicles; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times, most recently on January 8, 2002, for a term of 10 years from the expiration of the prior grant, expiring on October 16, 2011; and

WHEREAS, a condition of the most recent amendment was that a new certificate of occupancy be obtained by January

8, 2003; and

WHEREAS, however the applicant represents that due to management changes, the obligation to secure a new certificate of occupancy for the site was overlooked; and

WHEREAS, at hearing, the Board asked the applicant about an outstanding violation concerning an air compressor tank; and

WHEREAS, the applicant responded that an engineer inspected the site and provided a statement that the air compressor tank had been removed from the station when it was re-built in 1988 and that the violation associated with it was resolved; and

WHEREAS, the Fire Department provided testimony confirming that the air compressor had been removed and that there were no open violations; and

WHEREAS, at hearing, the Board asked the applicant how much time was needed to obtain the certificate of occupancy; and

WHEREAS, the applicant represents that inspections could be scheduled and that a certificate of occupancy could be obtained within 14 months; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, as adopted on October 16, 1956 under the subject calendar number, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy for an additional period of four years and six months from the prior grant’s expiration, to expire on July 8, 2007, *on condition*:

THAT a new certificate of occupancy shall be obtained by July 8, 2007;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(Alt. No. 301226359)

Adopted by the Board of Standards and Appeals, May 16, 2006.

551-61-BZ

MINUTES

APPLICANT – Fred Geremia, R.A., for SMR Realty Corp., owner.

SUBJECT – Application to consider dismissal for lack of prosecution.

PREMISES AFFECTED – 3275 Cruger Avenue a/k/a 3233 Cruger Avenue, southwest corner of Rosewood Street, Block 4596, Lot 22, Borough of The Bronx.

COMMUNITY BOARD #12BX

APPEARANCES – None.

ACTION OF THE BOARD – Application dismiss for lack of prosecution.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to extend the term of previous variance pursuant to Z.R. § 11-411; and

WHEREAS, the prior variance was granted on October 3, 1961, and permitted non-transient storage and parking in what was then a residence use district (and is now an R6 zoning district); and

WHEREAS, the grant has been re-opened, extended, and modified since that time, most recently in 1992, when the Board authorized a new ten year term, which has since expired; and

WHEREAS, the application was filed on June 13, 2005 by Fred Geremia, R.A., as the applicant on behalf of the fee owner; and

WHEREAS, subsequent to the filing, the Board’s examination staff sent a Notice of Objections to the applicant, dated September 20, 2005, which requested additional information necessary to for further processing of the application; and

WHEREAS, the applicant did not provide a written response to this Notice; and

WHEREAS, accordingly, the Board placed the matter on the calendar for a dismissal hearing; and

WHEREAS, the examiner notified the applicant of the dismissal hearing date on February 2, 2006 and May 1, 2006; no substantive written response from the applicant was received; and

WHEREAS, because of the applicant’s lack of prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 551-61-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, May 16, 2006.

39-66-BZ

APPLICANT – Sheldon Lobel, P.C., for Andrea Woodner,

owner.

SUBJECT – Application March 28, 2006 - Extension of Time/Waiver to obtain a Certificate of Occupancy, which expired in January 6, 2006, for transient parking of the unused and surplus tenants spaces in the accessory garage of a multiple dwelling building. The premise is located in a R6 zoning district.

PREMISES AFFECTED – 43-70 Kissena Boulevard, Block 5137, Lot 102, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to obtain a new certificate of occupancy for a transient parking lot, which expired on January 8, 2003;

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, and then to May 16, 2006 for decision; and

WHEREAS, on April 13, 1966, the Board granted a zoning variance and a Multiple Dwelling Law waiver under the subject calendar number to allow transient parking spaces in the cellar level accessory garage to a multiple dwelling located at the subject premises, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times, most recently on January 6, 2004, to permit an extension of time to obtain a certificate of occupancy for an additional two years, to expire on January 6, 2006; and

WHEREAS, the applicant explained that due to a reorganization in the management, the obtainment of the new certificate of occupancy was overlooked; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, as adopted on April 13, 1966, under the subject calendar number, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy for an additional period of two years from the prior grant’s expiration, to expire on January 6, 2008, on condition:

THAT a new certificate of occupancy shall be obtained by January 6, 2008;

THAT there shall be a maximum of 50 parking spaces used for transient parking at the cellar and first floors at the

MINUTES

subject premises;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

THAT the above condition and all conditions from the prior resolution shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(Alt. 2039-65)

Adopted by the Board of Standards and Appeals, May 16, 2006.

337-79-BZ, Vol. II

APPLICANT – Moshe M. Friedman, P.E., for Dr. Martin S. Bernstein, owner.

SUBJECT – Application January 23, 2006 – Extension of Term/Waiver for the conversion of the first story of an existing two (2) story residential building into medical offices, located in an R2 zoning district.

PREMISES AFFECTED – 2107 Avenue N, north side of Avenue N, 40’ east of East 21st Street, Block 7657, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of the term of a previously granted variance that expired on December 16, 2005; and

WHEREAS, a public hearing was held on this application on January 23, 2006, after due notice by publication in *The City Record*, with continued hearing on May 2, 2006, and then to decision on May 16, 2006; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the subject premises is located on the north

side of Avenue N, 40 feet east of 21st Street, and is occupied by an existing two-story building; and

WHEREAS, on December 16, 1980, the Board granted a variance pursuant to ZR § 72-21, to permit, in an R2 zoning district, the conversion of the first floor of the two-story building into medical offices; and

WHEREAS, subsequently, the variance was re-opened twice to extend the term; and

WHEREAS, the instant application initially sought to extend the term of the variance for ten years; and

WHEREAS, upon review, the Board grants the requested renewal of the variance and eliminates the term, provided that there is compliance with the conditions set forth below and on the prior resolutions.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, and *reopens* and *amends* the resolution, dated December 16, 1980, so that as amended this portion of the resolution shall read: “to renew the grant and eliminate its term; *on condition* that the use and operation of the medical offices shall substantially conform to drawings as filed with this application, marked ‘Received January 23, 2006’–(2) sheets and ‘Received May 4, 2006’–(1) sheet ; and *on further condition*:

THAT this variance shall lapse with any change in ownership or control;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(Alt. No. 209/1979)

Adopted by the Board of Standards and Appeals, May 16, 2006.

43-99-BZ

APPLICANT – Windels Marx Lane and MittenDorf, LLP, for White Castle Systems, Inc., owner.

SUBJECT – Application November 22, 2005 – Extension of Term/Waiver/Amendment to a previously granted special permit for a drive-through facility accessory to an eating and drinking establishment for an additional term of five years. The amendment is to install and electronic amplification menu board. The premise is located in a C1-2 in an R-4 zoning district.

PREMISES AFFECTED – 38-02 Northern Boulevard, southwest corner formed by the intersection of Northern Boulevard, Block 1436, Lot 1, Flushing, Borough of Queens.

COMMUNITY BOARD #3Q

MINUTES

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term of the special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on December 7, 2004, as well as an amendment to allow the installation of an electronic amplification board at the drive through facility; and

WHEREAS, a public hearing was held on this application on January 10, 2006, after due notice by publication in *The City Record*, with continued hearings on February 14, 2006, March 14, 2006, and April 25, 2006, and then to decision on May 16, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan, Commissioner Collins and Commissioner Chin; and

WHEREAS, Community Board 3, Queens and the Queens Borough President both recommend approval of this application, on condition that the hours of the amplified board are limited; and

WHEREAS, the site is located on the southwest corner of Northern Boulevard and 88th Street, within a C1-2(R4) zoning district, has a lot area of 10,000 sq. ft., and is occupied by an existing eating and drinking establishment (a White Castle fast food restaurant), with a drive-through facility with a ten vehicle capacity reservoir, and eight accessory parking spaces; and

WHEREAS, on December 7, 1999, under the subject calendar number, the Board granted a special permit authorizing the drive through facility for the restaurant, for a period of five years, which expired on December 7, 2004; and

WHEREAS, in addition to an extension of term, the applicant requests Board approval of a proposed electronically amplified menu board; and

WHEREAS, the applicant states that the restaurant needs the amplified board in order to expedite customer service during peak hours; the installation of the board will allow customers to order first and then proceed to the window; and

WHEREAS, the applicant initially proposed to locate the menu board at the a point in the drive-through lane such that there would only be limited space for three vehicles behind a vehicle stopped at the board, even though the ten required reservoir spaces required by the special permit text would still be provided; and

WHEREAS, the Board expressed concern that such a minimal queuing space could cause vehicles to back up into the driveway or street, and suggested that a revised proposal that increased the amount of spaces be submitted; and

WHEREAS, the Board also expressed concern about the

layout of the accessory parking spaces; and

WHEREAS, the applicant responded by submitting a revised site plan showing a new location for the amplified board that would allow five spaces instead of three; and

WHEREAS, the applicant also submitted evidence that the average time that it takes a customer to order at White Castle restaurants in the area is 40 seconds; and

WHEREAS, the applicant states that based upon its review of peak hour usage of various White Castle drive through facilities, including the subject facility, five queuing spaces after the menu board is sufficient to cover the amount of customers, based upon an average 40 second ordering time; and

WHEREAS, specifically, based upon this review, the applicant stated that at the subject location, only eight vehicles used the drive-through facility during the busiest hour of the day, and at no point was there more than one car in the facility; and

WHEREAS, the applicant also reconfigured the accessory parking, so that certain of the spaces near the entrance driveway are positioned perpendicularly, which will enhance vehicle access and maneuverability on the site; and

WHEREAS, at the request of the Board, the remainder of the spaces will be angled; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term and amendment is appropriate, so long as the restaurant complies with all relevant conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, said resolution having been adopted on December 7, 1999, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from December 7, 2004, and to permit the installation of an amplified menu board and the reconfiguration of accessory parking; *on condition* that all work and site conditions shall comply with drawings marked "Received May 10, 2006"- (1) sheet; and *on further condition*:

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be a minimum of seven accessory parking spaces located at the site;

THAT the amplified board shall only be used from 7 AM to 9 PM on weekdays, and from 8AM to 9 PM on Saturday and Sunday;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”
(DOB App. No. 402100249)

Adopted by the Board of Standards and Appeals, May 16, 2006.

370-03-BZ

APPLICANT – Fischbein Badillo Wagner Harding for Metroeb Realty Corp., owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED –143-153 Roebling Street, aka 17-19 Hope Street, east side of Roebling between Hope Street and Metropolitan Avenue, Block 2368, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

Adopted by the Board of Standards and Appeals, May 16, 2006.

379-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED –107 Debevoise Avenue (aka 20Division Place), southwest corner of Debevoise Avenue and Division Place, Block 2849, Lot 15, Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

Adopted by the Board of Standards and Appeals, May 16, 2006.

143-05-A

APPLICANT – Eric Palatnik, P.C., for Andrew Latos & Peter Latos, owners.

SUBJECT – Application February 15, 2006 – Extension of Time to complete construction and to obtain a Certificate of Occupancy. On November 29, 2005 BSA granted issued a resolution determining that the owner of the premises had obtained a vested right to continue construction under DOB permit No. 4021124879 and reinstated the permit for a period of six months to expire on May 29, 2006. The premise is located in a R2A zoning district.

PREMISES AFFECTED – 47-05 Bell Boulevard, between 47th and 48th Avenues, Block 7346, Lot 49, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the time to complete construction previously granted by the Board upon a November 29, 2005 determination under the subject calendar number that the owner of the subject premises has obtained a vested right to continue construction under Department of Buildings (“DOB”) Permit No. 4021124870 (the “Permit”); and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in the *City Record*, and then to decision on May 16, 2006; and

WHEREAS, the subject premises is a 2,300 sq. ft. lot located on Bell Boulevard between 47th and 48th Avenues; and

WHEREAS, the subject premises is occupied by an existing two-family dwelling that is proposed to be converted into a three-family dwelling under the Permit; and

WHEREAS, at the time that the Permit was issued (March 13, 2005), the premises was within an R3-2 zoning district, where such conversion was permitted; and

WHEREAS, on April 12, 2005, the City Council approved the rezoning proposal for the subject neighborhood; consequently, the subject premises is now within an R2A zoning district, where the conversion is not permitted; and

WHEREAS, because of the rezoning, the applicant subsequently filed an application for a finding that the owner had vested rights under the Permit, stating that vested rights to proceed under the Permit had been acquired based upon the amount of work performed and the amount of expenditures made; and

WHEREAS, the Board granted this application on November 29, 2006, ordered that the Permit be reinstated, and allowed six months for the completion of construction; the grant will expire on May 29, 2006; and

WHEREAS, the applicant states that although work recommenced following the Board’s reinstatement of the Permit, full completion of construction was not achieved

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because of a change in architect and related delays in making appropriate filings at DOB; and

WHEREAS, the applicant states that it will likely take approximately one year to finish construction and obtain necessary DOB sign-offs; and

WHEREAS, at hearing, the Board requested photographs of the work that has been completed since the original reinstatement; and

WHEREAS, the applicant submitted photos of the work, which the Board has reviewed; the Board agrees that progress has been made since the original reinstatement; and

WHEREAS, in sum, the Board finds it appropriate to grant the requested extension of time, since good faith efforts to complete construction have been made since the original reinstatement.

Therefore it is Resolved that the Board reinstates DOB Permit No. 4021124870 for a period of one year from date of the expiration of the original reinstatement, to expire on May 29, 2007, subject to DOB review and approval of plans associated with the Permit.

Adopted by the Board of Standards and Appeals, May 16, 2006.

149-05-A

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas, owner.

SUBJECT – Application February 21, 2006 – Extension of Time to complete construction and to obtain a Certificate of Occupancy. On November 1, 2005 BSA issued a resolution determining that the owner of the premises had obtained a vested right to continue construction under DOB permit No. 401867618 and reinstated the permit for a period of six months to expire on May 1, 2006. The premise is located in an R2A zoning district.

PREMISES AFFECTED – 32-29 211th Street, east corner of 32nd Avenue and 211th Street, Block 6061, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the time to complete construction previously granted by the Board upon a November 1, 2005 determination under the subject calendar number that the owner of the subject premises has obtained a vested right to continue construction under Department of Buildings (“DOB”) Permit No. 401867618 (the “Permit”); and

WHEREAS, a public hearing was held on this application

on April 25, 2006, after due notice by publication in the *City Record*, and then to decision on May 16, 2006; and

WHEREAS, the subject premises is a 4,500 sq. ft. lot located on the east side of 211th Street, south of 32nd Avenue; and

WHEREAS, the subject premises is occupied by an existing one-family dwelling that is proposed to be enlarged under the Permit; and

WHEREAS, at the time that the Permit was issued (May 4, 2004), the premises was within an R2 zoning district, where such conversion was permitted; and

WHEREAS, on April 12, 2005, the City Council approved the rezoning proposal for the subject neighborhood; consequently, the subject premises is now within an R2A zoning district, where the conversion is not permitted; and

WHEREAS, because of the rezoning, the applicant subsequently filed an application for a finding that the owner had vested rights under the Permit, stating that vested rights to proceed under the Permit had been acquired based upon the amount of work performed and the amount of expenditures made; and

WHEREAS, the Board granted this application on November 1, 2005, ordered that the Permit be reinstated, and allowed six months for the completion of construction; this grant expired on May 1, 2006; and

WHEREAS, the applicant states that the delay in construction is due to the Permit not being reinstated by DOB until February 13, 2006 and because of the contractor’s scheduling conflicts; and

WHEREAS, the applicant states that it will likely take approximately one year to finish construction and obtain necessary DOB sign-offs; and

WHEREAS, in sum, the Board finds it appropriate to grant the requested extension of time, since good faith efforts to complete construction have been made since the original reinstatement.

Therefore it is Resolved that the Board and reinstates DOB Permit No. 401867618 for a period of one year from date of the expiration of the original reinstatement, to expire on May 1, 2007, subject to DOB review and approval of plans associated with the Permit.

Adopted by the Board of Standards and Appeals, May 16, 2006.

499-29-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum, owner; BP Products, lessee.

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SUBJECT – Application March 3, 2006 – Application for the Extension of Term of an Automotive Service Station with an accessory automotive repair establishment located in a C1-2/R3-2 zoning district. The term expired on March 23, 2006.

The application is seeking a 10 year extension.

PREMISES AFFECTED – 248-70 Horace Harding Expressway, southwest corner of Marathon Parkway, Block 8276, Lot 660, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for continued hearing.

364-36-BZ, Vol. II

APPLICANT – Joseph P. Morsellino, for Dominick Tricarico & Est. of P. Tricarico, owner.

SUBJECT – Application July 13, 2005 – Extension of Term/Waiver of a Variance which expired on February 11, 2005 for an additional 15 year term of an automotive service station. The premise is located in a C1-4 and R6B zoning district.

PREMISES AFFECTED – 31-70 31st Street, 31st Street and Broadway, Block 589, Lot 67, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 20, 2006, at 10 A.M., for adjourned hearing.

565-57-BZ

APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 5832 Broadway (5848 Broadway or 196-198 West 239th Street) southeast corner of Broadway and 239th Street, Block 3271, Lot 198, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Arcadius Kaszuba and Michael Rubinstein.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for continued hearing.

374-71-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Evelyn DiBenedetto, owner; Star Toyota, lessee.

SUBJECT – Application February 12, 2004 – Pursuant to Z.R. §§72-01 and 72-22 for an extension of term of a variance permitting an automobile showroom with open display of new and used cars (UG16) in a C2-2 (R3-2) district. The application also seeks an amendment to permit accessory customer and employee parking in the previously unused vacant portion of the premises.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 6269, Lots 14 and 20, located on the North West

corner of Northern Boulevard and the Clearview Expressway, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Adam Rothkrug and Michael Koufakis.

For Opposition: Henry

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for continued hearing.

295-77-BZ

APPLICANT – Walter T. Gorman, P.E., for Alfred M. Lama, Barnik Associates, LLC, owner.

SUBJECT – Application September 27, 2005 – Extension of Term/Waiver of a variance Z.R. §72-21 for the continued use of a gasoline service station which expired on October 1, 2003 for an additional ten (10) years; and an amendment to legalize the conversion of a portion of the service building from office/sales and attendant’s area to an accessory convenience store, the erection of a trash enclosure, air pump tower and car vacuum, a public telephone and wooden planter boxes. The premise is located in an C1-2 in R4 zoning district.

PREMISES AFFECTED – 87-10 Northern Boulevard, southside blockfront between 87th and 88th Streets, Block 1435, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to June 6, 2006, at 10 A.M., for decision, hearing closed.

545-78-BZ

APPLICANT – Petraro & Jones, LLP, for Cotaldo Vasapolli, owner.

SUBJECT – Application January 15, 2004 – Reopening for an extension of the term of a variance for a commercial vehicle storage establishment in an R4 zoning district. The term expired on March 27, 2002. The application also seeks a waiver of the Board’s rules of practice and procedure for an extension of term application filed more than one year, but less than two years, following expiration of the term. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 901/903 Pine Street, West side of Pine Street, 250 feet north of the intersection of Pine Street and Cozine Avenue, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Steven Simicich.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

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ACTION OF THE BOARD - Laid over to June 6, 2006, at 10 A.M., for decision, hearing closed.

83-00-BZ

APPLICANT – Eric Palatnik, P.C., for KFC US Properties, Inc., owner.

SUBJECT – Application September 21, 2005 – Reopening for a waiver of the Rules of Practice and Procedure and for an extension of the term of special permit which expired September 26, 2003.

PREMISES AFFECTED – 87-11/21 Northern Boulevard, northern corner of 88th Street, Block 1417, Lot 36, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik and Leo Viana.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to July 11, 2006, at 10 A.M., for decision, hearing closed.

364-04-BZ

APPLICANT – Sheldon Lobel, for New Lots Avenue, LLC, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 690-702 New Lots Avenue, south side of New Lots Avenue between Jerome Street and Warwick Street, Block 4310, Lots 5, 7, 8 &10, Borough of Brooklyn

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to June 13, 2006, at 10 A.M., for continued hearing.

SUBJECT – Application filed on August 12, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R2 zoning district. Current Zoning District is R2A.

PREMISES AFFECTED – 28-32 215th Street, east side of 215th Street, between 28th Avenue and 29th Avenue, Block 6016, Lot 56, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

Adopted by the Board of Standards and Appeals, May 16, 2006.

205-05-A

APPLICANT – Zygmunt Staszewski, P.E. for Sheila Cardinale, lessee; Breezy Point Cooperative, Inc. owner.

SUBJECT – Application August 30, 2005 – Proposed enlargement of an existing one family dwelling, not fronting on a mapped street, is contrary to GCL §36, Article 3 and is also located partially within the bed of the mapped street including the upgrade of the existing private disposal system is contrary to GCL §35.

PREMISES AFFECTED – 47 Graham Place, north side of Graham Place, 52.20 West of beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD # 14Q

APPEARANCES –

For Applicant: Michele Harley.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 11, 2006, acting on Department of Buildings Application No. 402120575, reads, in pertinent part:

“A1 – The street giving access to the existing building to be altered is not duly placed on the map of the City of New York

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law

b) Existing dwelling to be altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally

APPEALS CALENDAR

190-05-A

APPLICANT – Stadtmauer Bailkin, LLP, for John Antzoulis, owner.

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mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

- A2 – The proposed enlargement is on a site where the building and lot are partially located in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3 Section 35 of the General City Law. Proposed upgraded private disposal system is in the bed of a mapped street contrary to General City Law Article 3, Section 35.”; and

WHEREAS, a public hearing was held on this application on May 16, 2006, after due notice by publication in the *City Record*, hearing closed, and then to decision on the same date; and

WHEREAS, by letter dated September 16 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated October 19, 2005, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated, March 30, 2006, the Department of Transportation has reviewed he above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated April 11, 2006, acting on Department of Buildings Application No. 402120575, is modified by the power vested in the Board by Section 35/36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 30, 2005”- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2006.

400-05-BZY/401-05-BZY

APPLICANT – John Patrick Curran of Tannebaum Helpen et al for Philip Caccese, owner.

SUBJECT – Application December 28, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior

R3-X Zoning District. Current R3-1 Zoning District. PREMISES AFFECTED – 3202 and 3204 Morley Avenue, Block 4313, Lots 2 and 4, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of certificates of occupancy for, two townhouses currently under construction at the subject premises; and

WHEREAS, the Board notes that while separate applications were filed for each permit for each of the townhouses, in the interest of convenience, it heard the cases together and the record is the same for both of the applications; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, and then to decision on May 16, 2006; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the subject premises is located on the south side of Morley Avenue, southeast of Cranford and Richmond Roads; and

WHEREAS, the premises are currently located within an R3X zoning district, but were formerly located within an R3-1 zoning district; and

WHEREAS, the development complies with the former R3-1 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on December 3, 2003 (hereinafter, the “Enactment Date”), the City Council voted to adopt the rezoning of the area, which rezoned the sites to R3X; and

HEREAS, as of that date, foundation construction had been completed, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain certificates of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of two or more buildings on contiguous zoning lots, as a “minor development”; and

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WHEREAS, for “minor development,” an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permits for the proposed development were lawfully issued to the owner by DOB, prior to the Enactment Date: Permit Nos. 500507418-01-NB and 500507409-01-NB (hereinafter, the “New Building Permits”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises on the referenced date, prior to the Enactment Date; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board

only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed townhouses subsequent to the issuance of the New Building Permits resulted in fully-constructed buildings except for the installation of finish materials; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: photographs of both lots showing completed exteriors and partially completed interiors; building plans, stamped and sealed by the architect; an affidavit from the architect, indicating the amount of work completed; and copies of contracts, work orders, invoices, and cancelled checks; and

WHEREAS, the affidavit, signed by the architect of record, indicating the extent of completion, corroborates the applicant’s statements as to the scope and complexity of the work; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid New Building Permits; and

WHEREAS, the applicant represents that the following work remains to be done: the installation of finish materials including sheetrock, plumbing fixtures, flooring, cabinets, lighting and appliances; and

WHEREAS, further, the applicant represents that work has not been completed as a result of a delay in the completion of the New York City Department of Design and Construction’s Dalton Avenue Sewer Project; and

WHEREAS, the Board notes that the actual completion of physical construction is substantial in itself, in that it resulted in tangible above-grade construction; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid is \$242,992.45 while the total project cost is \$367,572.54 (66.11 percent completion); in support of this claim, the applicant has submitted invoices and cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the New Building Permits;

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site the requested two-year extension for completion of construction that is allowed under ZR § 11-332.

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Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permits Nos. 500507418-01-NB and 500507409-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed townhouse development for one term of two years from the date of this resolution, to expire on May 16, 2008.

Adopted by the Board of Standards and Appeals, May 16, 2006.

402-05-BZY thru 424-05-BZY

APPLICANT – Eric Palatnik, P.C., for Grymes Hill Estates, Inc., owner.

SUBJECT – Application December 28, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R3-2 zoning district. Current R3-A zoning district.

PREMISES AFFECTED – Tessa Court, Maxie Court, Block 616, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of certificates of occupancy for, 23 townhouses currently under construction at the subject premises; and

WHEREAS, the Board notes that while separate applications were filed for each permit for each of the townhouses, in the interest of convenience, it heard the cases together and the record is the same for all the applications; and

WHEREAS, a public hearing was held on this application on April 11, 2006, after due notice by publication in The City Record, and then to decision on May 16, 2006; and

WHEREAS, the site was inspected by a committee of the Board including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 1, Staten Island, recommends approval of the subject application; and

WHEREAS, the subject premises are three separate groups of townhouses, all bound by Vanduzer and Broad Streets; and

WHEREAS, the premises are currently located within an R3A zoning district, but were formerly located within an R3-2

zoning district; and

WHEREAS, the development complies with the former R3-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on December 3, 2003 (hereinafter, the “Enactment Date”), the City Council voted to adopt the rezoning of the area, which rezoned the sites to R3A; and

WHEREAS, as of that date, foundation construction had been completed, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain certificates of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 et seq., which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed, which involves the construction of two or more buildings on contiguous zoning lots, as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

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WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permits, and renewals, for the proposed development were lawfully issued to the owner by DOB, prior to the Enactment Date: Permit Nos. 500416766-01-NB, 500416775-01-NB, 500416784-01-NB, 500416793-01-NB, 500416800-01-NB, 500416819-01-NB, 500416819-01-NB, 500416828-01-NB, 500416837-01-NB, 500416944-01-NB, 500416953-01-NB, 500416962-01-NB, 500416971-01-NB, 500416980-01-NB, 500416999-01-NB, 500416454-01-NB, 500416935-01-NB, 500416926-01-NB, 500416917-01-NB, 500416908-01-NB, 500416891-01-NB, 500416882-01-NB, 500416873-01-NB, 500416864-01-NB (hereinafter, the "New Building Permits"); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises on the referenced date, prior to the Enactment Date; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in its written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed townhouse developments subsequent to the issuance of the New Building Permits resulted in at least 50 percent of construction completed in all areas; and

WHEREAS, the applicant represents that the following work has been completed throughout the development: foundations, slabs, drywells, framing, interior stairs, windows, and roofs; and

WHEREAS, the applicant represents that the following work remains to be completed: siding, insulation, landscaping, electrical, interior plumbing, and interior finishing; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: photographs of each lot showing the amount of work completed; an affidavit from the architect, indicating the amount of work completed; and copies of contracts, work orders, invoices, and cancelled checks; and

WHEREAS, the affidavit from the architect of record corroborates the applicant's statements as to the scope of

work; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid New Building Permits; and

WHEREAS, thus, taken as a whole, the applicant asserts that construction of the three groups of townhouses was at least 50 percent complete as of December 3, 2005, with 12,241.9 square feet improved and 25,708.1 square feet remaining to be improved; and

WHEREAS, the Board notes that the actual completion of physical construction is substantial in itself, in that it resulted in tangible above-grade construction; and

WHEREAS, as to costs, the applicant represents that the total project cost is \$3,668,500.00; the estimated value of the construction completed is \$1,183,386.15 (32 percent); in support of this claim, the applicant has submitted invoices and cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the New Building Permits;

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site the requested two-year extension for completion of construction that is allowed under ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit Nos. 500416766-01-NB, 500416775-01-NB, 500416784-01-NB, 500416793-01-NB, 500416800-01-NB, 500416819-01-NB, 500416819-01-NB, 500416828-01-NB, 500416837-01-NB, 500416944-01-NB, 500416953-01-NB, 500416962-01-NB, 500416971-01-NB, 500416980-01-NB, 500416999-01-NB, 500416454-01-NB, 500416935-01-NB, 500416926-01-NB, 500416917-01-NB, 500416908-01-NB, 500416891-01-NB, 500416882-01-NB, 500416873-01-NB, 500416864-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed townhouse developments for one term of two years from the date of this resolution, to expire on May 16, 2008.

Adopted by the Board of Standards and Appeals, May 16, 2006.

35-06-A

APPLICANT – Joseph Sherry- for William Witt, lessee
Breezy Point Cooperative Inc.

SUBJECT – Application filed March 1, 2006 – Proposed

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reconstruction and enlargement of a single family dwelling not fronting on a mapped street, contrary to GCL § 36, Article 3. Upgrade existing private disposal system in the bed of the service road contrary to Buildings Department policy. Current R4 zoning district.

PREMISES AFFECTED – 9 Doris Lane, N/S 261.92 W/O Mapped Beach 201st Street, Block 16350, Lot 400. Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 7, 2006 acting on Department of Buildings Application No. 402263135 reads, in pertinent part:

“A1 – The Site and building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of New York.

A2 – The existing private disposal system being upgraded is in the bed of a private service road contrary to Department of Buildings policy.”; and

WHEREAS, a public hearing was held on this application on May 16, 2006 after due notice by publication in the *City Record*, and then to decision on May 16, 2006; and

WHEREAS, by letter dated April 6, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 7, 2006, acting on Department of Buildings Application No. 402263135 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 1, 2006”–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2006.

53-06-A

APPLICANT – Valentino Pompeo for Breezy Point Co-op Inc., owner, Karen Lindsay, lessee

SUBJECT – Application filed March 22, 2006 – Proposed reconstruction and enlargement of a single family dwelling not fronting on a mapped street contrary to GCL § 36, Article 3

PREMISES AFFECTED – 104 Beach 215th Street, south of Beach 215th Street east of Breezy Point Blvd., Block 11635, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Valentino Pompeo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 7, 2006, acting on Department of Buildings Application No. 402171804 reads, in pertinent part:

“A1 – The street giving access to the existing building to be altered is not duly placed on the map of the City of New York

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law

b) Existing dwelling to be altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on May 16, 2006 after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated February 27, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens

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Borough Commissioner, dated February 7, 2006, acting on Department of Buildings Application No. 402171804 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received March 22, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2006.

231-04-A

APPLICANT – Joseph P. Morsellino, Esq., for Chris Babatsikos and Andrew Babatsikos, owners.

SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243rd Street, Block 8103, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Joseph Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for continued hearing.

360-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, Brooklyn, south side of 15th Street, 205' feet 5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deidre Carson and Robert Palermo, AIA.

For Opposition: John W. Buras, John Keefe for Assemblymember James F. Brennan.

For Administration: Angelina Martinez-Rubin, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Chin and Christopher Collins.....3

Negative:.....0

Absent: Vice-Chair Babbar.....1

ACTION OF THE BOARD - Laid over to June 20, 2006, at 10 A.M., for decision, hearing closed.

368-05-A

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, south side of 15th Street, 205'-5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

For Applicant: Deidre Carson and Robert Palermo, AIA.

For Opposition: John W. Buras, John Keefe for Assemblymember James F. Brennan.

For Administration: Angelina Martinez-Rubin, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to June 20, 2006, at 10 A.M., for decision, hearing closed.

362-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th LLC, owner.

SUBJECT – Application December 16, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a six story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, Brooklyn, east side of Sixth Avenue 128'2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

For Opposition: John Buras, Yi Holwin, John Keefe for Assemblymember James F. Brennan.

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to June 20, 2006, at 10 A.M., for decision, hearing closed.

367-05-A

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th Avenue, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, east side of Sixth Avenue, 128'-2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

For Opposition: John Buras, Yi Holwin, John Keefe for Assemblymember James F. Brennan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4

Negative:.....0

ACTION OF THE BOARD - Laid over to June 20, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, MAY 16, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

320-04-BZ

APPLICANT – Harold Weinberg, P.E., for Michael Reznikov, owner.

SUBJECT – Application September 20, 2004 – Proposed legalization of a Special Permit Z.R. §73-622 for a two-story and rear enlargement, to an existing one family dwelling, Use Group 1, located in an R3-1 zoning district, which does not

comply with the zoning requirements for floor area ratio, lot coverage, open space and rear yard, is contrary to Z.R. §23-141, §23-47 and §54-31.

PREMISES AFFECTED – 229 Coleridge Street, east side, 220'-0" south of Oriental Boulevard, Block 8741, Lot 72, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 29, 2005, acting on Department of Buildings Application No. 301810100, reads, in pertinent part:

1. Increases the degree of non-compliance with respect to floor area ratio . . . contrary to Section 23-141 of the Zoning Resolution.
2. Creates a new non-compliance with respect to lot coverage and open space . . . contrary to Section 23-141 ZR.
3. Creates a new non-compliance with respect to rear yard and is contrary to Section 23-47 ZR.
4. Increases the degree of non-compliance of perimeter wall height . . . contrary to Section 23-631.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the legalization of a purported enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, lot coverage, perimeter wall height, and rear yard, contrary to ZR §§ 23-141, 23-631 and 23-47; and

WHEREAS, a public hearing was held on this application on March 7, 2006, after due notice by publication in *The City Record*, with a continued hearing on April 4, 2006, and then to decision on May 16, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application, because it is for a legalization; and

WHEREAS, the Manhattan Beach Community Group also appeared in opposition to this application; and

WHEREAS, the subject lot is located on the east side of Coleridge Street, 220 ft. south of Oriental Boulevard, in the Manhattan Beach neighborhood of Brooklyn; and

WHEREAS, the subject lot has a total lot area of 4,160 sq. ft.; and

WHEREAS, the applicant states that the lot is now

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occupied by a two-story single-family dwelling, with an FAR of 1.02, open space of 2,440 sq. ft. (9.8% less than required), lot coverage of 1,720 sq. ft. (18.1% over the maximum), a perimeter wall height of 25 ft., and a rear yard of 23 ft.; and

WHEREAS, the Department of Buildings has ascertained, and the applicant concedes, that none of these bulk parameters comply with applicable R3-1 district regulations; and

WHEREAS, the applicant states that the home was constructed to said parameters without first obtaining a special permit from this Board; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, however, the applicant has failed to convince the Board that the proposed legalization meets the parameters of the special permit; and

WHEREAS, specifically, the applicant did not adequately address the two following concerns, which were raised by the Board during the public hearing process: (1) whether the existing building reflects an actual enlargement of the prior building, or instead, is a new building; and (2) whether the existing perimeter wall height is allowed by the special permit; and

WHEREAS, as to the first issue, the Board notes that the text of ZR § 73-622 authorizes the Board to approve an enlargement of an existing building only; ground-up construction of a new non-complying building is not permitted; and

WHEREAS, the text repeatedly uses the word “enlargement”, which, pursuant to ZR § 12-10, is defined in part as “an addition to the floor area of an existing building”; and

WHEREAS, therefore, the Board takes the position that the special permit may not be used where there has been a complete demolition of the pre-existing building; and

WHEREAS, in the case of a legalization, the Board often questions the applicant about this issue, as the construction work has already taken place and the Board is unable to ascertain, through visual observation, that there is a pre-existing unenlarged home; and

WHEREAS, in the instant matter, the applicant claims that there was not a full demolition of the building, and points to the DOB Alteration Type II permit (No. 301421469) that was obtained in October 2002 for exterior masonry veneer and interior rehabilitation; and

WHEREAS, however, the applicant concedes that this permit did not cover what ultimately was constructed; in particular, the significant intrusion into the rear yard was built contrary to this permit; and

WHEREAS, the Board notes that DOB issued a stop work order as to the construction, because it was contrary to the approved plans; and

WHEREAS, accordingly, the Board does not consider the existence of this permit, the terms of which were violated, to be evidence that there was a pre-existing building that was enlarged; and

WHEREAS, the applicant also states that no violations

were issued for illegal demolition, which must mean that no demolition occurred; and

WHEREAS, again, the Board does not consider the absence of violations to be dispositive, as the Department of Buildings does not perform daily inspections of all permitted work; thus, demolition could have occurred notwithstanding the absence of violations; and

WHEREAS, in fact, the only record of a DOB inspection is the stop work order, issued in 2004, well after the Alteration Type II permit was obtained in 2002; and

WHEREAS, the Board notes that the applicant has submitted recently taken pictures of the existing building, and pictures of a building that occupied the site in the past, taken, according to the applicant, in the 1940s; and

WHEREAS, the Board has reviewed these pictures and notes that the existing building is noticeably different than the building that occupied the site in the 1940s; and

WHEREAS, thus, the applicant has not submitted into the record any firm evidence that the existing building is an enlargement of a prior building; and

WHEREAS, however, the applicant has submitted into the record evidence which suggests that the prior building and the existing building may not be the same building; and

WHEREAS, given the record before it, the Board is unable to conclude that the existing building is an enlargement of a prior building as opposed to a new building; and

WHEREAS, ZR § 73-622 does not authorize the Board to engage in speculation as to whether a home proposed to be legalized is an enlarged home; and

WHEREAS, instead, where a legalization is proposed, the applicant must convince the Board that the current home represents an enlargement of a prior home; and

WHEREAS, here, the applicant failed to meet this burden of proof; and

WHEREAS, accordingly, the subject special permit is not available to legalize the existing building; and

WHEREAS, the second issue is the perimeter wall height of the existing home; and

WHEREAS, the perimeter wall height of a home is the height of the street wall, as opposed to the total height of the building, which is typically measured at the top of the peaked roof for single-family homes; and

WHEREAS, in an R3-1 district, the maximum perimeter wall height is 21 ft.; the maximum total building height is 35 ft.; and

WHEREAS, the applicant’s most recent zoning analysis of the existing building lists the perimeter wall height at 25 ft., four ft. in excess of the maximum; and

WHEREAS, pursuant to ZR § 73-622(3), “an enlargement resulting in a non-complying perimeter wall height shall only be permitted where . . . the enlarged building is adjacent to a single or two family detached or semi-detached residence with an existing non-complying perimeter wall facing the street. The increased height of the perimeter wall of the enlarged building shall be equal to or less than the height of the adjacent building’s non-complying perimeter wall facing the street, measured at the lowest point

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before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631(b), shall continue to apply.”; and

WHEREAS, one of the adjacent buildings has a perimeter wall height that is less than 25 ft. (specifically, the applicant admits in a submission dated April 27, 2006 that the perimeter wall height of the abutting building at 225 Coleridge Street is at 24’-3”, though in a submission dated September 23, 2005, he states that the height of the abutting building is at 24’-9”); and

WHEREAS, as noted above, DOB issued an objection to the applicant that states, in sum and substance, that the existing building as illegally built increases the degree of non-compliance of perimeter wall height contrary to Section 23-631; and

WHEREAS, the applicant initially did not contest the validity of this objection; and

WHEREAS, confronted with the fact that the perimeter wall height of 25 ft. was higher than the non-complying perimeter wall height of the neighboring home at 225 Coleridge Street (whether 24’-3” or 24’-9”), the applicant then proceeded to argue that the perimeter wall height of the existing building was in fact a pre-existing lawful non-complying condition that was merely maintained rather than increased; and

WHEREAS, the applicant contends that since the perimeter height was not increased, there is no need for the Board to legalize the perimeter wall height through the special permit; and

WHEREAS, however, the record contains the DOB approved plans for the Alteration Type II permit referenced above, which show the height of the perimeter wall existing prior to the commencement of construction as 21’-0”; and

WHEREAS, accordingly, the Board asked the applicant to explain how the 25 ft. perimeter wall could be a pre-existing lawful non-complying condition when the architect that signed and sealed the Alteration Type II plans indicated that the perimeter wall height existed at 21 ft.; and

WHEREAS, the applicant responded that the architect was in error, and that based upon his personal knowledge of the building when it was converted into a two-family dwelling in 1976 under DOB Alteration No. 689/76, the perimeter wall height was at 25 ft.; the applicant notes that he personally prepared the 1976 alteration application; and

WHEREAS, the applicant submitted the application forms for the 1976 alteration; these plans list the height of the building at that time at 25 ft.; and

WHEREAS, the Board notes that the 1976 alteration form does not specify that the 25 ft. height is a perimeter wall height as opposed to a total building height; and

WHEREAS, nonetheless, the applicant claims this listing is actually the perimeter wall height, and not the total building height; and

WHEREAS, the Board finds this explanation unconvincing: the Vice-Chair of the Board, both a registered architect and a former DOB Commissioner with broad knowledge of DOB practice and procedure, noted at hearing that the listing for building height on the form represented

total height, not perimeter wall height; and

WHEREAS, the Board asked the applicant to support his contention through the submission of an elevation or section related to the 1976 alteration that would show the perimeter wall height; and

WHEREAS, the applicant refused, stating that he only submitted a floor plan to DOB in 1976, and the floor plan did not show the perimeter wall height; and

WHEREAS, in the April 27, 2006 submission, the applicant cites to the 1940s-era photos, and states that based on his approximations of the height of the step risers, the floors, and the attic level as shown in the photos, the actual perimeter wall height might have been at least 23’-4”; and

WHEREAS, even if the Board accepted the applicant’s completely unsupported measurements, which are based on an entirely unacceptable methodology, by the applicant’s own admission, the perimeter wall height of the existing building, at 25 ft., is still approximately 1’-8” higher than the alleged pre-existing non-complying wall height, and therefore can not represent a continuation of a non-complying condition; and

WHEREAS, instead, it is still an increase in the non-complying condition; and

WHEREAS, for the reasons set forth above, the Board concludes that the existing building’s perimeter wall height represents an increase in the degree of non-compliance; and

WHEREAS, because the 25 ft. high perimeter wall exceeds the perimeter wall height of the neighboring building, this non-compliance cannot be remedied through the special permit; and

WHEREAS, accordingly, even assuming that the applicant had submitted sufficient evidence that the existing home is actually an enlargement of a prior home, the special permit would still not be available; and

WHEREAS, in conclusion, the Board finds that it is without authority to grant the requested special permit pursuant to ZR § 73-622; and

WHEREAS, as a final observation, the Board notes that this case was considerably compromised by the fact that the building owner did not first seek the special permit prior to commencing construction, as the significant evidentiary problems present in the case arose primarily from this failure.

Therefore it is Resolved that the determination of the Brooklyn Borough Commissioner, dated September 29, 2005, acting on Department of Buildings Application No. 301810100, is hereby upheld and that this application for a special permit pursuant to ZR § 73-622 is hereby denied.

Adopted by the Board of Standards and Appeals, May 16, 2006.

396-04-BZ
CEQR #04-BSA-076M

APPLICANT – Stroock & Stroock & Lavan, LLP, by Ross Moskowitz, Esq., for S. Squared, LLC, owner.

SUBJECT – Application December 21, 2004 – Under Z.R. §72-21 to permit the Proposed construction of a thirteen story, mixed use building, located in a C6-2A, TMU zoning

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district, which does not comply with the zoning requirements for floor area, lot coverage, street walls, building height and tree planting, is contrary to Z.R. §111-104, §23-145, §35-24(c)(d) and §28-12.

PREMISES AFFECTED – 180 West Broadway, northwest corner, between Leonard and Worth Streets, Block 179, Lots 28 and 32, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ross Moskowitz.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 9, 2004, acting on Department of Buildings Application No. 103938045, reads, in pertinent part:

“Proposed lot coverage of residential portion of the building exceeds allowable lot coverage, contrary to ZR 23-145”; and

WHEREAS, this is an application under Z.R. §72-21, to permit, on a site in a C6-2 zoning district within the Special Tribeca Mixed Use district - Area A-1 (“TMU”), a proposed eight story mixed-use residential/retail building, which does not comply with lot coverage, contrary to Z.R. §23-145; and

WHEREAS, the applicant proposes to construct an eight story plus penthouse residential/retail building, with ground floor retail and 16 residential units on the upper floors; and

WHEREAS, the proposed building will be constructed pursuant to the Quality Housing regulations set forth at Chapter 8, Article II of the ZR, and will have a complying Floor Area Ratio (FAR) of 5.0, a complying street wall height of 84’-7”, and a complying total height of 96’-7” (not including mechanicals) ; and

WHEREAS, the proposed lot coverage, however, is 100 percent, which exceeds the maximum lot coverage of 80 percent permitted by Z.R. §23-145 for a corner lot and the maximum of 70 percent for an interior lot; and

WHEREAS, the applicant initially proposed to construct a 13 story building with 39 residential units, a non-complying FAR of 7.11, a non-complying street wall height of 91’-3”, and a non-complying total height of 159’-11” (including mechanicals); the proposed building also did not comply with the Quality Housing street tree planting regulations; and

WHEREAS, the Board expressed concern about this proposal, noting that there did not appear to be any justification for an FAR waiver, and also that the proposed building was too large for the character of the community and did not represent the minimum variance; and

WHEREAS, the applicant submitted two intermediate proposals, both of which were also determined by the Board to reflect more than the minimum variance; and

WHEREAS, specifically, the second proposal was a twelve story building with 34 units, a non-complying FAR of 6.79, a non-complying street wall height of 101’-11”, and a non-complying total height of 149’-11” (including mechanicals); and

WHEREAS, the third proposal was an eleven story building with 30 units, a non-complying FAR of 6.28, a non-complying street wall height of 91’-3”, and a total height of 124’-7”; and

WHEREAS, neither of these intermediate proposals complied with the street tree planting requirement; and

WHEREAS, the applicant responded to the Board’s concerns about these two proposals by submitting the current version, as described above, which the Board finds acceptable in terms of impact and minimum variance; and

WHEREAS, the Board also observes that the applicant obtained a reconsideration from the Department of Buildings that eliminated the need for a street tree planting waiver; and

WHEREAS, a public hearing was held on this application on October 18, 2005 after due notice by publication in the *City Record*, with continued hearings on November 29, 2005, February 7, 2006, and March 7, 2006, and then to decision on April 25, 2006, on which date the decision was deferred to May 16, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board No. 1, Manhattan, recommends disapproval of the original version of this application, contending that the site does not suffer from a hardship; in particular, the Community Board alleged that the recent initiation of nearby complying development belies the claim of hardship; and

WHEREAS, certain neighbors to the premises also appeared in opposition to this application, alleging that the developer should have known about the alleged hardships in advance of purchasing the site; and

WHEREAS, the subject premises is situated at the southwest corner of West Broadway, between Leonard and Worth Streets, and consists of two contiguous tax lots (Lots 28 and 32), which have historically constituted one zoning lot; and

WHEREAS, the total lot area over the entire site is 16,179 sq. ft.; and

WHEREAS, the site is within a C6-2A zoning district, which is an R8A equivalent for residential use within the TMU district; and

WHEREAS, Lot 28 is improved upon with an existing public parking garage, containing 37,952 sq. ft. of floor area, which will be retained; and

WHEREAS, Lot 32 (the actual development site) is improved upon with an existing three-story commercial building, containing 10,651 sq. ft. of floor area, which is proposed to be demolished; and

WHEREAS, no accessory parking spaces are required or will be provided; and

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WHEREAS, initially, the applicant stated that the following were unique physical conditions which, when considered in combination, create an unnecessary hardship in developing the site in compliance with the applicable regulations: (1) the site suffers from pre-existing poor soil conditions; (2) the soil is contaminated; (3) the site suffers from a high water table; (4) a subway tunnel is in close proximity to the site; and (5) the actual development site (Lot 32) is a shallow lot;; and

WHEREAS, as to the soil conditions, the applicant states that the soil consists of uncontrolled fill material underlain by soft peat, loose sandy clay, silty sand, and then bedrock at a depth of approximately 100 ft.; and

WHEREAS, the applicant states that a deep pile foundation system is required; and

WHEREAS, the applicant supported this statement with a letter prepared by its engineering consultant, which states that 76 foundation piles are required; and

WHEREAS, as to contamination, the applicant states that the premises contained an active automobile service station from approximately 1950 to 1985; and

WHEREAS, the applicant demonstrated that there were six 550 gallon gasoline storage tanks related to the service station use that resulted in soil contamination; and

WHEREAS, the applicant submitted a report from its environmental consultant detailing the degree of contamination and the costs associated with its remediation; and

WHEREAS, as to high water table, the applicant states that existing groundwater is measured at nine ft. below the surface; and

WHEREAS, the applicant states that the cellar floor and the grade walls must be designed to resist the hydrostatic uplift pressures from the water table, resulting in the need for a pressure mat; and

WHEREAS, finally, as to the subway tunnel, the applicant states that the No. 1 subway line runs below the site, and that the offset distance between the subway structure and the property line ranges from 2 ft. at the northeast corner of the site to 13 ft. at the southwest corner; and

WHEREAS, the applicant notes that due to the subway structure, piling for excavations needs to be installed with expensive cast-in-place drilled fractioned non-displacement piles in order to minimize settlement issues within the subway structure; this statement was supported by expert testimony from the project engineer; and

WHEREAS, at hearing, the Board requested that the applicant establish that such features were unique to the site, based upon a study of an expanded area surrounding the site; and

WHEREAS, the applicant responded by providing a study that compared the subject site to other properties within a 400 ft. radius; and

WHEREAS, this study showed that the subject site is the only site within this radius that is within both the limits of the former inland marsh area and the 50 ft. subway "influence zone" (where construction is constrained by New York City Transit

Authority regulations), and that also has significant unremediated environmental contamination; and

WHEREAS, the study included diagrams showing how these various factors differentially affected the subject site versus other properties; and

WHEREAS, based upon the above, the Board agrees that the specific combination of unique physical features, and the degree to which they impact complying development, is particular to the site; and

WHEREAS, the Board further agrees that the combination of features leads to premium construction costs; and

WHEREAS, as to the depth of Lot 32, the Board noted at the first hearing that while Lot 32 is shallow (having a depth of approximately 50 ft.), the zoning lot as a whole is not (the depth of the zoning lot is approximately 150 ft.); and

WHEREAS, the Board suggested to the applicant that it apply its analysis of unique hardship to the entire site and not a portion thereof; and

WHEREAS, the applicant agreed, and revised its uniqueness analysis to consider both the shallowness of the development portion of the zoning lot (Lot 32) and the retention of the existing garage on Lot 34; and

WHEREAS, the Board observes that the existing garage is a functioning, non-obsolete, lawfully non-conforming, revenue producing building that does not need to be demolished; and

WHEREAS, additionally, the applicant states that a scenario that includes the demolition of the garage would increase construction costs significantly, because of actual demolition costs and incremental costs related to environmental remediation on the garage site; and

WHEREAS, additionally, revenue from the garage would be lost during redevelopment; and

WHEREAS, the Board concludes that the retention of the garage is a rational development decision and is not a self-created hardship; and

WHEREAS, however, the garage does result in a further constraint on complying development, in that the remaining developable portion of the site is shallow; and

WHEREAS, the Board observes that without the requested lot coverage waiver, the resulting development on such a shallow site would be a taller, less efficient building, with a compromised floor plate that would not provide reasonable layouts for the residential units; and

WHEREAS, the lot coverage waiver allows for a far more efficient floor plate, which will increase revenue sufficiently to overcome the identified premium construction costs; and

WHEREAS, in sum, the Board finds that the need for a lot coverage waiver arises from the combination of premium costs and the constraints that retention of the existing garage places on the developable portion of the site; and

WHEREAS, accordingly, the Board finds that certain of the aforementioned unique physical conditions – namely, the site's soil, water table, contamination, and proximity to the subway - when considered in the aggregate and in conjunction with the existing built conditions on the zoning lot, create unnecessary hardship and practical difficulty in developing the

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site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing: (1) a complying mixed-use building; (2) an office building; and (3) a hotel; and

WHEREAS, as noted above, the Board asked for a revised study based upon the entire zoning lot, since the failure to include the garage valuation in the overall site valuation skewed the outcome of the feasibility study; and

WHEREAS, in response, the applicant modified the feasibility study and analyzed a complying mixed-use building that took into account the correct site valuation for the entire zoning lot; and

WHEREAS, the applicant concluded on the basis of this revised study that this scenario would not realize a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed building would contribute to an established pattern of commercial and residential land uses in the neighborhood, and would replace an existing three-story building with a building designed to better enliven the street presence fronting the site; and

WHEREAS, the applicant notes that the surrounding area includes numerous mixed-use residential/retail buildings, with ground floor retail; and

WHEREAS, the Board observes that the proposed uses are as of right; and

WHEREAS, the Board also observes that after reducing the size of the building and eliminating the FAR, total height, street wall height and street tree waiver requests, the building is fully compliant with zoning aside from the increase in lot coverage; and

WHEREAS, the Board finds that full lot coverage will not negatively affect the character of the community, nor will it impact the adjacent neighbors, particularly since the adjacent building is a parking garage on the same zoning lot as the proposed building; and

WHEREAS, even though the bulk of the building complies aside from lot coverage, the Board notes that the applicant submitted a survey showing the heights and FARs of buildings in the neighborhood, for both commercial and residential uses; and

WHEREAS, the Board observes that the proposed building is compatible in terms of height and FAR with many other residentially occupied buildings in the area, many of which are built to FARs of 6 or 7; and

WHEREAS, finally, the applicant notes that the retention

of the garage will negate any potential parking impacts, even though there is no accessory parking requirement for the proposed building; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, in addition, as stated above, the Board does not regard the retention of the garage to be a self-created hardship; and

WHEREAS, in addition to the analyses of the conforming scenarios, the applicant also analyzed the proposal and concluded that it would realize a minimal return sufficient to overcome the site's inherent hardships; and

WHEREAS, the applicant further elaborated that the mixed use residential/retail building scenario was analyzed both with and without the impact of the existing garage and related operational costs, and in each case, the return was minimal; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA076M, dated September 23, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: (1) an Environmental

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Assessment Statement Form, dated December 2004; (2) an August 2004 Phase I Environmental Site Assessment Report and a Phase II Subsurface Investigation Report; and (3) April 2005 Draft Remedial Action Plan; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, air quality and noise impacts; and

WHEREAS, a Restrictive Declaration was executed on May 8, 2006 and submitted for proof of recording on May 9, 2006, which requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the Restrictive Declaration and the Applicant's agreement to the conditions noted below; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit, on a site in a C6-2(TMU) zoning district, a proposed eight story mixed-use residential/retail building, which does not comply with lot coverage, which is contrary to Z.R. §23-145, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 21, 2006"- (8) sheets; "Received March 21, 2006"-(8) sheets, and "Received March 22, 2006"-(1) sheet and *on further condition*: THAT the following are the bulk parameters of the building: eight stories plus a penthouse, 16 residential units, FAR of 5.0, a street wall height of 84'7", a total height of 96'-7, and a non-complying lot coverage of 100 percent;

THAT all rooftop mechanicals shall comply with applicable Building Code requirements, as reviewed and approved by the Department of Buildings;

THAT all Quality Housing regulations shall be complied with, as reviewed and approved by the Department of Buildings;

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT this approval is limited to the relief granted by the

Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2006.

398-04-BZ

APPLICANT – Eric Palatnik, P.C., for Babavof Avi, owner. SUBJECT – Application December 23, 2004 – Under Special Permit Z.R. §73-622 – proposed legalization of an enlargement of a single family residence which causes non-compliance to Z.R. §23-14 for open space and floor area. The premise is located in R2 zoning district.

PREMISES AFFECTED – 2103 Avenue M, northeast corner of East 21st Street, Block 7639, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 2, 2004, acting on Department of Buildings Application No. 301065264, reads, in pertinent part:

“Proposed floor area is contrary to ZR 23-141;

Proposed open space ratio is contrary to ZR 23-141.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the proposed legalization of an enlargement to a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR) and Open Space Ratio (OSR), contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on April 11, 2006, after due notice by publication in *The City Record*, with a continued hearing on May 9, 2006, and then to decision on May 16, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on Avenue M at the northeast corner of Avenue M and East 21st Street; and

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WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and, prior to the illegal enlargement, was occupied by a 1,994 sq. ft. (0.50 FAR) single family dwelling; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, however, the applicant enlarged the previously existing home without first obtaining the special permit; and

WHEREAS, instead, the applicant represents that an alteration permit for an as of right enlargement was obtained from the Department of Buildings, and said permit allowed for the first floor to be exempt from floor area as it was occupied by a garage and recreation space; and

WHEREAS, however, the building, once enlarged, was occupied contrary to plans on the first floor, in that it was used for living spaces such as a family room and kitchen; in fact, the garage was used for a den; and

WHEREAS, further, the owner enclosed the second and third floor terraces by enclosing them with greenhouses; and

WHEREAS, these impermissible changes created significant non-compliances as to FAR and open space; and

WHEREAS, the owner was compelled to file for the subject legalization after the non-compliances were discovered; and

WHEREAS, upon initial filing, the applicant proposed to legalize the as-built enlargement without any modifications; and

WHEREAS, the floor area of the building as illegally enlarged is 4,927 sq. ft. (1.23 FAR); and

WHEREAS, the Board found that the building as enlarged was not compatible with the character of the neighborhood and was not in the spirit of the special permit, since it resulted in an oversized home relative to its neighbors and represented an extreme FAR increase over what is permitted as of right and what is usually granted by the Board through the special permit; and

WHEREAS, the Board notes that it typically grants 1.0 FAR in 0.5 FAR zoning districts; and

WHEREAS, the Board asked the applicant to eliminate excess floor area; in particular, the Board suggested that two greenhouses be removed, since they counted as zoning floor area; and

WHEREAS, at the Board's suggestion, the applicant removed the enclosed greenhouses on the second and third floors and revised the plans to reflect their removal; the applicant also provided photographs showing that the greenhouses have been removed; and

WHEREAS, however, the Board suggested a further reduction in floor area, since the elimination of the greenhouses reduced the FAR to a level still in excess of what the Board normally grants; and

WHEREAS, accordingly, the Board requested that the applicant eliminate additional excess floor area by removing the first floor family room and replacing it with a viable garage, since a garage would not count as floor area; and

WHEREAS, the applicant subsequently submitted plans showing that the family room will be replaced with a one-car

garage; and

WHEREAS, these modifications result in a dwelling with 4,067 sq. ft. (1.02 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the existing OSR of 112 percent is unaltered by the modifications; the minimum required OSR is 150 percent; and

WHEREAS, the complying front yard of 15 feet, 4 inches (15 feet is required) and two complying side yards, one of 14 feet and one of 6.5 feet (side yards of 8 feet and 5 feet are required), have been maintained; no rear yard is required for this corner lot; and

WHEREAS, both the complying wall height of 19.5 feet and the non-complying total height of 29 feet, 1.5 inches have been maintained; and

WHEREAS, the Board finds that, subsequent to the significant floor area reductions, the enlargement neither alters the essential character of the surrounding neighborhood, nor impairs the future use and development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed legalization of an enlargement, with modifications, to a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio and Open Space Ratio, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 11, 2006"-(8) sheets and "Received May 9, 2006"-(1) sheet; and *on further condition*:

THAT a garage accommodating one car shall be maintained as reflected on the BSA-approved plans;

THAT the garage shall not be used for living purposes;

THAT the terraces may not be enclosed;

THAT the driveway in the northern side yard shall be kept free of encroachments or obstructions;

THAT the above conditions shall be listed on the certificate of occupancy

THAT the total FAR on the premises shall not exceed 1.02;

THAT a certificate of occupancy be obtained within one year from the date of this grant;

THAT no certificate of occupancy shall be issued unless a DOB inspection prior to issuance confirms that the greenhouses remained removed and the garage is actually

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being used as a garage;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2006.

5-05-BZ

CEQR #05-BSA-081Q

APPLICANT – Sheldon Lobel, P.C., for S & J Real Estate, LLC, owner.

SUBJECT – Application January 14, 2005 – Under Z.R. §73-53 – to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,499.2 square feet.

PREMISES AFFECTED – 59-25 Fresh Meadow Lane, east side, between Horace Harding Expressway and 59th Avenue, Block 6887, Lot 24, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 9, 2005, acting on Department of Buildings Application No. 402067712, reads:

“Enlargement of the lawful existing non-conforming contractor's establishment is not permitted as of right per ZR 52-40.”; and

WHEREAS, this is an application made pursuant to Z.R. §§ 73-53 and 73-03, to allow, within an R3-2 zoning district, the proposed extension of a Use Group (“UG”) 16D Contractor's Establishment Storage and Offices, contrary to Z.R. §52-40; and

WHEREAS, a public hearing was held on this application on June 14, 2005 after due notice by publication in *The City Record*, with continued hearings and/or adjournments on July 26, 2006, September 20, 2005, November 29, 2005, January 10, 2006, March 7, 2006 and April 4, 2006, and then to decision on May 16, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the

Board, consisting of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, Community Board 11, Queens, recommends disapproval of this application, because of concerns about traffic and impact on quality of life for the neighbors; and

WHEREAS, adjacent neighbors to the subject site appeared in opposition to the application, stating: (1) that the site no longer enjoyed non-conforming use status because the UG 16 use currently occupying the site is a different use than the UG 17 Soda Water Bottling and Soda Water Storage use authorized by the most recently issued certificate of occupancy (“CO”), and no CO for the UG 16 use was obtained, as required by the Building Code; and (2) that because no CO was obtained, the UG 16 use is not “lawfully located”, as required by Z.R. §73-53(a)(3); and

WHEREAS, the Board observes that these two threshold issues merit initial discussion; and

WHEREAS, as to the first issue, the opposition notes that Z.R. §52-61 provides, in sum and substance, that the lawful non-conforming status of a use is discontinued if the use lapses for a period of two years or more; and

WHEREAS, the opposition states that the failure to obtain a new CO in 1969, which is when the change in use from UG 17 to UG 16 occurred, constitutes a lapse of the non-conforming use; and

WHEREAS, however, the record contains a statement from the Department of Buildings dated October 27, 2005, which states that it does not consider the non-conforming use status of the site to have been discontinued; and

WHEREAS, DOB cites to an appellate court decision, *City of New York v. Victory Van Lines*, 69 A.D.2d 605 (2d Dep't 1979), which holds that the CO requirement, at least in the context of an analysis of whether non-conforming use status has lapsed, is merely a technical formality, and so long as the new use is permitted under the change of non-conforming use provisions in Article V of the Zoning Resolution, the non-conforming status of the site is maintained; and

WHEREAS, the Board agrees that this is the correct reading of the *Victory Van Lines* case, and concurs that the existing UG 16 use is permissibly occupying the site as non-conforming use; and

WHEREAS, as to the second issue, the opposition notes that one of the other prerequisites for the subject special permit is set forth at Z.R. §73-53(a)(3), which reads: “the use for which such special permit is being sought has been lawfully located on the zoning lot on which the expansion is to occur, or a portion thereof, for five years or more”; and

WHEREAS, the record reveals that the UG 16 storage use has existed on the site for over five years, having been first established in 1969, when the building was used for the storage of furniture; and

WHEREAS, however, the opposition states that the currently valid CO for the site is from 1956, and, as noted above, establishes the legal use of the premises as UG 17 soda water bottling and soda water storage; and

WHEREAS, while UG 16 storage was established on

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the site sometime in 1969, the property owner failed to obtain a new CO, as required for the change in UG; and

WHEREAS, in a submission dated April 28, 2006, DOB states that the current occupancy is inconsistent with the last CO and is therefore illegal as per Section 27-217 of the Building Code, which provides, in pertinent part: “No change shall be made in the occupancy or use of an existing building which is inconsistent with the last issued certificate of occupancy for such building . . . unless a new certificate of occupancy is issued by the commissioner certifying that such building or part thereof conform to all of the applicable provisions of this code and all other applicable laws and regulations for the proposed new occupancy or use.”; and

WHEREAS, DOB asserts that a new CO was required in 1969 because of the change from UG 17 to UG 16; and

WHEREAS, the opposition argues, in sum and substance, that the phrase “lawfully located” as used in Z.R. § 73-53(a)(2) means that the use must be legal in all respects, and if a CO has not been obtained as required, then the use is not “lawfully located” notwithstanding the permissibility of the existing use under the Z.R.; and

WHEREAS, the Board agrees with DOB that a CO should be obtained and, in fact, as a condition of the grant made herein, requires that one be obtained for the subject use prior to issuance of any permit for the proposed enlargement; and

WHEREAS, however, the Board does not construe the phrase “lawfully located” in the same way as the opposition; and

WHEREAS, the Board finds that reading a requirement into this phrase that obtainment of a CO is absolutely necessary even where DOB has opined that for zoning purposes, the use is permissible as its non-conforming status has not lapsed, is contrary both to the principles underlying the holding of Victory Van Lines and to the purpose of the special permit; and

WHEREAS, the Victory Van Lines case established that for zoning purposes, the failure to obtain a CO is not tantamount to a discontinuance of a non-conforming use pursuant to Z.R. §53-32; and

WHEREAS, Z.R. §53-32 is a zoning provision, just as Z.R. §73-53 is a zoning provision; and

WHEREAS, it is reasonable, therefore, for the Board to conclude that a CO requirement for purposes of being lawfully located pursuant to Z.R. §73-53 would impose the same kind of unreasonably technical obstacle to use or development of one’s property as identified by the court in Victory Van Lines; and

WHEREAS, furthermore, the purpose of the special permit is to allow certain manufacturing uses that occupied floor area within a building as of 1987 the opportunity to enlarge without seeking a variance pursuant to Z.R. §72-21; and

WHEREAS, the Board notes that the UG 16 use has occupied floor area within the building since 1969, and therefore, whether a CO had been obtained or not, the enlargement of this use is consonant with the purpose of the special permit; and

WHEREAS, in sum, the Board construes the phrase “lawfully located” to mean permissible by zoning; and

WHEREAS, the Board observes that acceptance of the opposition’s argument would require the Board to conduct a full examination of the existing use and the site for not only zoning compliance, but also for compliance with Building Code, State Labor Law, and other legal requirements, perhaps even laws and regulations that do not relate to land use or building form; and

WHEREAS, the Board notes that this would be contrary to its usual practice: on all variance and special permit applications, the Board only reviews the particular zoning provision objected to by DOB; if a waiver or modification of that provision is granted, the resolution for the grant explicitly states that compliance with other applicable zoning provisions and other laws will be as reviewed and approved by DOB; and

WHEREAS, the Board notes that this interpretation is limited to the phrase “lawfully located” as used in Z.R. §73-53(a)(3), and should not be construed in any way as a limitation on DOB’s ability to enforce against a premises that does not have a proper CO, or as a limitation on DOB’s enforcement capabilities in general; and

WHEREAS, in conclusion, the Board finds neither of the arguments presented by the opposition to be persuasive; and

WHEREAS, the record indicates that the subject zoning lot is located on the east side of Fresh Meadow Lane, between Horace Harding Expressway and 59th Avenue, and is within an R3-2 zoning district; and

WHEREAS, the lot is 6,000 square feet and is improved upon with a 3,200-square-foot one-story building; and

WHEREAS, the applicant asserts that the 1952 building has been continuously occupied for storage use from the time it was built; and

WHEREAS, as noted above, the most recent CO was issued in 1956, and authorizes UG 17 Soda Water Bottling and Soda Water Storage; and

WHEREAS, the applicant states that from 1956 to 1969, the soda water and bottling company occupied the building; and

WHEREAS, subsequent to that, from 1969 until 2003, the prior business owner used the site and building for storage of furniture, a UG 16 storage use; and

WHEREAS, the current owner, who took possession of the site in 2003, also proposes to use the building primarily for storage, with two accessory offices; and

WHEREAS, the applicant proposes to enlarge the existing building by 2,499.2 square feet, in order to add storage and office space on the first and second floors; and

WHEREAS, as to the prerequisites, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the premises is not subject to termination pursuant to Z.R. §52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use on the site during the past five years; the subject building has not

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received an enlargement pursuant to Z.R. §§11-412, 43-121 or 72-21; and that the subject use is listed in Use Group 16D, not Use Group 18; and

WHEREAS, in support of this demonstration, the applicant has submitted utility bills, a letter from the prior owner, and a history of the listing for storage in the Cole's Directory, starting with 1972; and

WHEREAS, the requested proposal is for an extension that results in less than 45% of the floor area occupied by the UG 16 use on December 17, 1987 and is less than a 2,500 square feet addition to the floor area occupied by such use on December 17, 1987, and does not exceed 10,000 square feet; and

WHEREAS, the applicant represents that the extension will be located in an entirely enclosed building, and that there will be no open uses of any kind; and

WHEREAS, the applicant represents, and the Board agrees, that that the requirements set forth at Z.R. §§73-53(b)(4),(5),(6),(7),(8), and (9) are either satisfied, or are inapplicable to the instant application; and

WHEREAS, at hearing, the Board expressed concern about potential parking impacts, the hours of operation of the storage facility, off-site accessory parking, the illegal presence of a towing company, and trailers that are present on the site; and

WHEREAS, as to potential parking impacts, the applicant states the number of employees at the premises will be a maximum of five or six at any one time, and their vehicles will be parked exclusively on the premises; and

WHEREAS, the applicant also states that there will be a total of approximately 20 deliveries to and from the site during the week, and that the delivery vehicle will be located entirely within the building during loading and unloading; and

WHEREAS, the applicant states that the following will be the hours of operation: 8 a.m. to 5 p.m. Monday through Friday and 8 a.m. to 1 p.m. on Saturday; the Board finds these hours acceptable; and

WHEREAS, the applicant states that the off-site accessory parking has been terminated; and

WHEREAS, the applicant also states that legal proceedings have begun against the towing company in order to evict it; and

WHEREAS, the applicant also states that all trailers will be removed from the site; and

WHEREAS, accordingly, the record indicates and the Board finds that the subject extension will not generate significant increases in vehicular or pedestrian traffic, nor cause congestion in the surrounding area, and that there is adequate parking for the vehicles generated by the enlargement, and that loading will be inside the building; and

WHEREAS, the Board notes that there are no required side yards; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the Board notes that along Fresh Meadow Lane, there are numerous non-residential uses, located on Lots, 6, 14, 18, 20, 22, 24, 28, 30, 38, 35, and 40; and

WHEREAS, the Board observes that a cemetery is located across the street from the site, and that two-story commercial buildings abut the site to the rear; and

WHEREAS, accordingly, in spite of its zoning classification, the neighborhood in which the site is located is characterized by a significant manufacturing and commercial presence; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, although allegations were made about traffic impacts arising from the proposed enlargement, no evidence of such has been submitted to the Board; and

WHEREAS, further, the Board notes that the grant of the special permit is conditioned such that certain potential adverse effects are mitigated; and

WHEREAS, finally, the Board notes that the grant of the special permit will facilitate the enlargement of a viable UG 16 use, which provides jobs and tax revenue, on a site where such use is appropriate; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use are outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under Z.R. §§73-53 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§73-53 and 73-03 for a special permit to allow, within an R3-2 zoning district, the proposed extension of Use Group 16D Contractor's Establishment Warehouse and Wholesale use, contrary to Z.R. §52-40, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received July 12, 2005"-(1) sheet and "Received April 4, 2005" -(5) sheets; and *on further condition*;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be no open uses on the site;

THAT the hours of operation are: 8 a.m. to 5 p.m. Monday through Friday and 8 a.m. to 1 p.m. on Saturday;

THAT the offices shall be accessory to the storage facility only;

THAT the above conditions shall appear on any issued certificate of occupancy;

THAT all applicable fire safety measure will be complied with;

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THAT within six months from the date of this grant, the owner of the premises shall have obtained a certificate of occupancy for the existing use;

THAT no building permit for the proposed enlargement shall be issued by the Department of Buildings unless and until a certificate of occupancy has been obtained within this six month period;

THAT prior to the issuance of any building permit for the enlargement of the facility, all trailers currently on the site shall be removed;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals May 16, 2006.

74-05-BZ

CEQR #05-BSA-110R

APPLICANT – Snyder & Snyder, LLP, for The Island Swim Club, Inc., Omnipoint Communications, Inc., lessee.

SUBJECT – Application March 29, 2005 – Under Z.R. §§73-30 and 22-21 – to permit the proposed construction of a non-accessory radio tower for public utility wireless communications (disguised as a 50-foot tall flagpole), located in an R3-2 zoning district.

PREMISES AFFECTED – 1089 Rockland Avenue, northeast side, between Borman and Shirra Avenues, Block 2000, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert B.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated March 21, 2005, acting on Department of Buildings Application No. 500668949, reads in pertinent part:

“Proposed monopole (Use Group 6) is contrary to NYC Department of Buildings Technical Policy and Procedure Notice 5/98 and therefore not allowable within R3-2 district . . . review pursuant to Section 73-30 of the NYC Zoning Resolution.”; and

WHEREAS, this is an application under Z.R. §§73-30 and 73-03, to permit the proposed construction of a non-accessory radio tower for public utility wireless

communications, within an R3-2 zoning district, which is contrary to Z.R. §22-00; and

WHEREAS, initially, in March 2005, the applicant submitted applications for two cell towers; and

WHEREAS, this first proposal was for a 50-foot monopole at the subject location that received support from the Community Board, and a second 50-foot monopole at 2018 Richmond Avenue which was not supported by the Community Board; and

WHEREAS, in response to community concerns, the applicant reviewed both applications and withdrew the Richmond Avenue plan, while revising the proposal for Rockland Avenue; and

WHEREAS, in order to compensate for the service that would have been covered by the second pole, and to satisfy the applicant’s service area needs, the remaining 50-foot pole was enlarged to 80 feet; and

WHEREAS a public hearing was held on this application on January 10, 2006, after due notice by publication in *The City Record*, to continued hearing on April 11, 2006, and then to decision on May 16, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of the subject application; and

WHEREAS, the president of the Mid-Island Political Association Committee (MIPAC) appeared in opposition to this application, citing concerns about the existence of other cell tower sites in the community, particularly those near schools; and

WHEREAS, the Board noted that the number of cell tower locations cited has been confused with the number of antennas and that because there are typically six to twelve antennas per site, the number of sites is actually much lower than what the opposition presented; and

WHEREAS, further, the Board noted that the applicant provided evidence that the proposed facility will comply with all applicable regulations pertaining to radio frequency emissions; and

WHEREAS, the subject premises is used as a private swim club, known as Island Swim Club, and has a lot size of approximately 324,309 sq. ft.; and

WHEREAS, initially, the applicant proposed to locate the cell tower towards the perimeter of the proposed site; and

WHEREAS, at hearing, the Board expressed concern about the location within the chosen site and asked the applicant to investigate other locations that would minimize the visual impact of the pole; and

WHEREAS, the applicant revised the plans and now proposes to locate the monopole in an area towards the center of the property; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of an 80-foot tall monopole, designed to resemble a flagpole, that will hide all six antennas and related cables; and

WHEREAS, pursuant to Z.R. §73-30, the Board may

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grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.”; and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws; that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that related equipment cabinets will be installed within a gated and locked fence enclosure, and notes further that the general public is not allowed on the club’s grounds; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone, or other uses; and

WHEREAS, at hearing, the Board asked the applicant if there were other potential sites for the cell tower such as the Springville Little League ballfield; and

WHEREAS, the applicant submitted evidence of communication with the Springville Little League showing that the organization is not presently able to lease space on its property; and

WHEREAS, in response to the Board’s suggestion, the proposed facility will be constructed to support the antennas of another wireless carrier in order to promote collocation and discourage the proliferation of additional sites; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at Z.R. §73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at Z.R. §73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA110R, dated

March 29, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable.

Therefore it is Resolved that the Board of Standards and Appeals issues an Unlisted Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under Z.R. §§73-03 and 73-30, to permit the proposed construction of a non-accessory radio tower for public utility wireless communications, within an R3-2 zoning district, which is contrary to Z.R. §22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received March 27, 2006”–seven (7) sheets; and *on further condition*;

THAT any fencing and landscaping will be maintained in accordance with BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2006.

320-05-BZ

CEQR #06-BSA-027M

APPLICANT – Rothkrug Rothkrug Weinberg, for John Catsimatidis, owner; 113 4th Sports Club, LLC, lessee.

SUBJECT – Application November 2, 2005 – Special Permit Under Z.R. §73-36, to allow the proposed operation of a physical cultural establishment located on portions of the cellar and first floor of an existing eight story mixed use structure. PCE use is 25, 475 sq ft of floor area. The site is located in a C6-1 Zoning District.

PREMISES AFFECTED – 113/9 Fourth Avenue, a/k/a

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101/117 East 12th Street, N/E/C of Fourth Avenue and East 12th Street, Block 558, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 11, 2006, acting on Department of Buildings Application No. 104063656, reads, in pertinent part:

“Contrary to section 32-31 a Physical Culture Establishment is not permitted in a C6-1 zone.”; and

WHEREAS, this is an application under Z.R. §§73-36 and 73-03, to permit, within a C6-1 zoning district, a proposed physical culture establishment (“PCE”) to be located in portions of the cellar and first floor of an existing eight-story mixed-use building, contrary to Z.R. §32-00; and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in *The City Record*, and then to decision on May 16, 2006; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the applicant proposes to operate the facility as a Crunch gym; and

WHEREAS, the subject site is located at the northeast corner of Fourth Avenue and East 12th Street, and has a lot area of 13,830 square feet; and

WHEREAS, the proposed PCE will occupy 13,793 square feet in the cellar and 11,682 sq. ft. on the first floor; and

WHEREAS, the applicant represents that the PCE will provide classes, instruction, and programs for physical improvement, bodybuilding, weight reduction, and aerobics; and

WHEREAS, the PCE will have the following hours of operation: 5:00 A.M. to 11:00 P.M, weekdays and 7:30 A.M. to 9:00 P.M., weekends; and

WHEREAS, at hearing, the Board observed that there are residences above the location of the proposed PCE; and

WHEREAS, in response, the applicant represents that the recommendations of the acoustics consultants, pertaining to noise attenuation, have been incorporated into the PCE’s design; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the proposed PCE does not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to Z.R. §§73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06-BSA-027M, dated November 2, 2005, and

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§73-36 and 73-03, to permit, within a C6-1 zoning district, a proposed physical culture establishment to be located in portions of the cellar and first floor of an existing eight-story mixed-use building, contrary to Z.R. §32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 9, 2006”-(3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on May 16, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 5:00 A.M. to 11:00 P.M, weekdays and 7:30 A.M. to 9:00 P.M., weekends;

THAT the above conditions shall appear on the certificate of occupancy;

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THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety and sound attenuation measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2006.

339-05-BZ

CEQR #06-BSA-035K

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, Inc., owner.

SUBJECT – Application November 25, 2005 – Under Z.R. §72-21 – To permit the proposed construction of a Yeshiva and is contrary to Z.R. Sections 33-121 (floor area) and 33-441 (front setbacks).

PREMISES AFFECTED – 3574 Nostrand Avenue, south side of Nostrand Avenue, north of Avenue W, Block 7386, Lot 131, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik,.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 1, 2006, acting on Department of Buildings Application No. 301964890, reads, in pertinent part:

“1 - Proposed floor area is contrary to ZR § 33-121;

2 - Proposed front wall height and sky exposure plane is contrary to ZR § 33-431(a)”; and

WHEREAS, this is an application for a variance pursuant to Z.R. §72-21, to permit, on a site within an R4 (C1-2) zoning district, a proposed six-story plus cellar Use Group 3 yeshiva and use Group 4 synagogue, which does not comply with Floor Area Ratio (FAR), wall height, and sky exposure plane requirements for community facilities, contrary to Z.R. §§33-121 and 33-431; and

WHEREAS, a public hearing was held on this application on February 14, 2006, after due notice by publication in *The City Record*, with continued hearings on

April 4, 2006 and May 2, 2006, and then to decision on May 16, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, at hearing and through submissions, neighbors of the site provided testimony in opposition to the proposed development citing concerns about the scale of the building and potential shadow impacts, the large number of students, the hours of operation, traffic, noise from the play area, and garbage; these concerns are addressed below; and

WHEREAS, this application is being prosecuted on behalf of the Congregation Lev Bais Yaakov, a non-profit religious entity (hereinafter, the “Yeshiva”); and

WHEREAS, the subject premises is located on the western side of Nostrand Avenue, north of the intersection of Avenue W, and is improved upon with several one-story buildings, which are proposed to be demolished; and

WHEREAS, the applicant proposes to construct a 68’-5” high building (35 feet is the maximum permitted), with 36,260.31 sq. ft. of floor area (21,000 sq. ft. is the maximum permitted); a FAR of 3.45 (2.0 FAR is permitted for a community facility), with Use Group (“UG”) 3 yeshiva use space on the cellar through sixth floors, and UG 4 synagogue space on the first floor; and

WHEREAS, the proposed building also violates the sky exposure plane regulation at the front of the building at the fourth, fifth and sixth floors; and

WHEREAS, the applicant also proposes to have one side yard of 8’-6” and one of 8’-2” (there is no side yard requirement); a 30 ft. rear yard after the permitted first floor obstruction up to 23 ft. in height (a 20 ft. rear yard is required); and three parking spaces (none are required); and

WHEREAS, the applicant initially proposed a building with a 20 ft. foot rear yard but, in response to neighbors’ concerns and at the Board’s suggestion, moved the building forward 10 feet on the lot, reducing the total floor area by approximately 600 square feet and leaving an open area of ten feet between the building and adjacent properties at the rear at the first floor level; and

WHEREAS, further, at the Board’s suggestion, the applicant reduced the height of each floor by 8 inches, resulting in a reduction of the overall height from 75 ft. to 68’-5”; and

WHEREAS, the Board also notes that some of this reduction was the result of a higher cellar level than initially proposed; the applicant modified the cellar level because of concerns about the high water table present at the site; and

WHEREAS, consequently, the configuration of the building will be as follows: the first floor will be set back 10’-0” from the rear lot line to a height of 13’-3”; the second through sixth floors will be set back six feet, six inches from the front lot line and 30 feet from the rear lot line; and the total height will be 68’-5”, exclusive of mechanicals; and

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WHEREAS, the proposed building will contain 35 classrooms, administrative offices, a computer room, a science laboratory, a cafeteria and multi-purpose room, therapy rooms, counselor and teacher offices, and a play area to be located on the terrace at the second floor roof; and

WHEREAS, the applicant states that the following are the programmatic needs of the Yeshiva: (1) sufficient classroom and assembly space to accommodate all current and future students at one facility; and (2) a reasonably sized accessory synagogue; and

WHEREAS, as to the space needs, the applicant asserts that the Yeshiva's enrollment has increased significantly in recent years, requiring it to move five times within a nine-year period; currently, the school operates from two different facilities, with pre-school classes in one building and elementary classes in another; and

WHEREAS, the applicant asserts that having all of the classes of the Yeshiva centrally located in a single building will promote efficient use of its financial and administrative resources, and provide a superior religious educational atmosphere; and

WHEREAS, the proposed amount of classrooms (35) would accommodate the current enrollment of 312 students and allow for continued growth, including the establishment of high school grades; only 23 classrooms would be permitted as-of-right, which the Yeshiva states would not be sufficient; and

WHEREAS, the applicant cites to standards that establish the following standard space requirements for primary education facilities: 30 square feet for each younger student and 20 square feet for each older student; and

WHEREAS, the applicant submitted a tabular breakdown of the proposed rooms as to size and usage; and

WHEREAS, the Board accepts that having the various classes consolidated into one facility, with an accessory synagogue, and with space for establishment of a high school, is a legitimate programmatic need of the Yeshiva, based upon the cited efficiency and education goals; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious educational institution, is entitled to significant deference under the case law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: the existing site does not provide the requisite amount of lot area to comply with applicable FAR requirements and still allow development of a building that would meet the programmatic needs of the Yeshiva; and

WHEREAS, specifically, the applicant states that the additional floor area is necessary to create a sufficient amount of class rooms and accessory spaces that will accommodate the combined student body; and

WHEREAS, the applicant further states that the required FAR can not be accommodated within the as of right height and sky exposure plane parameters, thus necessitating the requested

waivers of these provisions; and

WHEREAS, the applicant claims that a complying building would result in irregular floor plates at the upper floors because of the sky exposure plane requirement, which would compromise the ability of the Yeshiva to occupy the building in a manner that meets the programmatic needs; and

WHEREAS, the applicant argues that the requested height and sky exposure plane waivers would enable the Yeshiva to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating a uniform floor plate, the waivers also allow the Yeshiva to provide 30 ft. deep rear yard above the first floor and 10 ft. of rear yard at the first floor, in addition to the proposed side yards, all which mitigates any impact on the properties to the rear; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical condition, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address Z.R. §72-21(b) since the Yeshiva is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant also notes that the site is on the side of the block with the commercial overlay and is between two-story and one-story commercial buildings and two-story residences to the rear of the site; and

WHEREAS, the applicant also notes that there is a seven-story housing development across the street; and

WHEREAS, as noted above, the rear neighbors expressed concerns about the potential shadow impact the proposed building might have; and

WHEREAS, at the Board's request, the applicant a submitted shadow study, which charts the effect of both an as-of-right development and the proposed development, based upon four times during the year; and

WHEREAS, the shadow study demonstrates that both the as-of-right and proposed developments would cast the rear adjoining properties in shade until 11 a.m. and the houses on the properties only until 9 A.M., and that the difference between the as of right and proposed development is negligible; and

WHEREAS, the rear neighbors allege that the shadow study is faulty because the rear yard of the proposed building is shown as 40 feet rather than 30 feet above the first floor; and

WHEREAS, in response, the applicant notes that there is a ten ft. setback from the rear lot line at the first floor and that it is not added to the 30 ft. setback provided at the upper floors; 30

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ft. is the correct dimension the upper floor setback; and

WHEREAS, as to this setback, the Board observes that while the dimensions of the shadow study are difficult to read, it does appear that the 30 ft. setback is identified properly; and

WHEREAS, the Board also notes that the repositioning of the building towards the front lot line minimizes the impact of the proposed height and the shadow effect; and

WHEREAS, the rear neighbors also expressed concern about noise coming from the play area; and

WHEREAS, the applicant has agreed to limit the hours of play on the playground; and

WHEREAS, the hours will be: 8:30 A.M. through 4:30 P.M., Monday through Thursday and 8:30 am through 12:30 pm, Friday; and

WHEREAS, the Board notes that these hours are also the hours of operation for the Yeshiva; and

WHEREAS, at hearing, the Board also expressed concern about noise from the mechanicals, and suggested that the applicant locate the mechanicals to the top of the six story portion, away from the rear neighbors; the applicant subsequently submitted plans showing the mechanicals located on the top of the six-story portion; and

WHEREAS, additionally, the opposition expressed concern about potential traffic impact; and

WHEREAS, the applicant noted that the majority of students would arrive by school bus; and

WHEREAS, the applicant proposes to establish a designated bus loading zone; and

WHEREAS, the applicant also proposes to provide a shuttle bus for faculty members; and

WHEREAS, as to concern about increased garbage, the applicant notes that it will provide regularly scheduled garbage pick up and will maintain all garbage containers at the side of the building away from the residences at the rear; and

WHEREAS, the Board observes that aside from the height, sky exposure plane, and floor area waivers, the proposed bulk of the building and the uses therein are as of right; and

WHEREAS, the Board further observes that many mitigating measures have been incorporated into the design of the building that would not occur in an as of right scheme; and

WHEREAS, first, the Board observes that while religious schools, as a community facility use, are permitted to extend fully -into the rear yard to a height of 23 feet so long as there is only one story, the proposed building includes a 10 ft. setback from the rear lot line; and

WHEREAS, since the proposed building will be 13 feet, 3 inches high at the roof of the first floor, and sets back to 30 feet after that, no rear yard waiver is required; and

WHEREAS, further, the hours of the playground, the location of the mechanicals, and the shuttle bus service are all regulated per condition, and all of these mitigating measures would not be required in an as-of-right development; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding

neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Yeshiva could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, after accepting guidance from the Board as to the design and location of the building and the necessary waivers, the applicant amended the proposal to the current version, which the Board finds to be the minimum necessary to afford the Yeshiva the relief needed to both meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.06BSA035K, dated January 9, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit, on a site within an R4 (C1-2) zoning district, a proposed six-story plus cellar yeshiva and accessory synagogue, which does not comply with the floor area ratio,

MINUTES

wall height, and sky exposure plane requirements for community facilities, contrary to Z.R. §§33-121 and 33-431, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 12, 2006"–(15) sheets; and *on further condition*:

THAT any change in ownership, control or ownership of the building shall require the prior approval of the Board;

THAT the hours of the playground are limited to 8:30 A.M. through 4:30 P.M., Monday through Thursday and 8:30 A.M. through 12:30 P.M., Friday;

THAT the Yeshiva will provide a shuttle bus for faculty and members to and from the site for so long as it occupies the subject site;

THAT there shall be no use of the rear setback area as a playground for students;

THAT the rear setback area shall be kept clean, and free and clear of debris and garbage;

THAT all fencing in the rear yard shall comply with Building Code regulations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the building mechanicals will be located on the portion of the building that rises to 68 feet, 5 inches, as indicated on the BSA-approved plans;

THAT roof-top mechanicals shall comply with all applicable Building Code and other legal requirements, as reviewed and approved by the Department of Buildings; and

THAT the following shall be the parameters of the proposed building: six stories plus a cellar, a community facility and total FAR of 3.45; lot coverage of 57.8 percent; a street wall height of 68 feet, 5 inches; and side and rear yards as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2006.

146-04-BZ

APPLICANT – Joseph Margolis for Jon Wong, Owner.
SUBJECT – Application April 5, 2006 – Pursuant to Z.R. §72-21 – to allow the residential conversion of an existing manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Joseph Margolis, Ivan Khory, Raymond Chan and Rebecca Pytosh.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

290-04-BZ

APPLICANT – Stuart A. Klein, Esq., for Alex Lokshin – Carroll Gardens, LLC, owner.

SUBJECT – Application August 20, 2004 – under Z.R. §72-21 to permit, in an R4 zoning district, the conversion of an existing one-story warehouse building into a six-story and penthouse mixed-use residential/commercial building, which is contrary to Z.R. §§22-00, 23-141(b), 23-631(b), 23-222, 25-23, 23-45, and 23-462(a).

PREMISES AFFECTED – 341-349 Troy Avenue (a/k/a 1515 Carroll Street), Northeast corner of intersection of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for continued hearing.

328-04-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application October 5, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a six story residential building, with twelve dwelling units, Use Group 2, located in an M1-1 zoning district, does not comply with zoning requirements for use, bulk and parking provisions, is contrary to Z.R. §42-00, §43-00 and §44-00.

PREMISES AFFECTED – 110 Franklin Avenue, between Park and Myrtle Avenues, Block 1898, Lots 49 and 50, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Chris Wright.

For Opposition: Charles O'Connor and Downies L. Scruggo.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for continued hearing.

334-04-BZ

APPLICANT – Sheldon Lobel, P.C., for L & L Realty, owner. Great Roosevelt Plaza Corporation, lessee.

SUBJECT – Application October 8, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a seven-story mixed-use building containing retail, general office and community facility space. No parking will be provided. The site is currently occupied by two commercial buildings which will be demolished as part loading of the proposed action. The site is located in a C4-2 zoning district. The proposal is contrary to Z.R. §36-21 (Required parking), §36-62 (Required loading berth), and §33-432(Sky exposure plane and setback requirements).

MINUTES

PREMISES AFFECTED – 135-28 Roosevelt Avenue, Roosevelt Avenue between Prince Street and Main Street. Block 5036, Lots 26(fka 25/26), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for continued hearing.

66-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Inc., owner.

SUBJECT – Application March 16, 2005 – Special Permit filed Under Z.R. §§11-411 and 11-413 of the zoning resolution to request the instatement of an expired, pre-1961, variance, and to request authorization to legalize the change of use from a gasoline service station with accessory automotive repairs, to an automotive repair facility without the sale of gasoline, located in a C2-4/R7-1 zoning district.

PREMISES AFFECTED – 1236 Prospect Avenue, southeast corner of Prospect Avenue and Home Street, Block 2693, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 13, 2006, at 1:30 P.M., for decision, hearing closed.

108-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – Under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #74, the companion case, 109-05-BZ is Tax Lot #76 on the same zoning lot.

PREMISES AFFECTED – 224-22 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 13, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug

For Opposition: Judith Charrington.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 13, 2006, at 1:30 P.M., for decision, hearing closed.

109-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – Under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #76, the companion case, 108-05-BZ is Tax Lot #74 on the same zoning lot.

PREMISES AFFECTED – 224-26 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 76, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug

For Opposition: Judith Charrington.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 13, 2006, at 1:30 P.M., for decision, hearing closed.

165-05-BZ

APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.

SUBJECT – Application July 25, 2005 – Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.

PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156’-3” East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jeffrey A. Chester and Roberto DeLos Rios.

ACTION OF THE BOARD – Laid over to July 18,

MINUTES

2006, at 1:30 P.M., for continued hearing.

202-05-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.

SUBJECT – Application August 24, 2005 – Under Z.R. to §73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district.

PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik and Steve Chon.

For Opposition: Joan Vogt for Senator Padaman, Councilman Tony Avella.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

352-05-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Peter Procops, owner; McDonald’s Corporation, owner.

SUBJECT – Application December 14, 2005 – Z.R. §73-243 proposed re-establishment of an expired special permit for an eating and drinking establishment with an accessory drive-through, located in a C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection at Beach Channel Drive, Block 15709, Lot(s) 101, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jeffrey Chester and Gerald Laurino.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

28-06-BZ

APPLICANT – Harold Weinberg, P.E., for Moshe Plutchok, owner.

SUBJECT – Application February 16, 2006 – Special Permit, Z.R. §73-622 for the enlargement of an existing single family home which seeks to vary Z.R. §23-141 for increase in floor area, lot coverage and open space ratio, Z.R. §23-461 for side yards and Z.R. §23-47 for less than the required rear yard. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 158 Beaumont Street, west side, 300’ north of Oriental Boulevard, between Oriental Boulevard and Hampton Avenue, Block 8733, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 13,

2006, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: 3:30P.M.

BULLETIN

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June 16, 2006

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Tuesday, June 6, 2006**

Morning Calendar 405

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32-38-BZ	88 Third Avenue, Brooklyn
295-77-BZ	87-10 Northern Boulevard, Queens
545-78-BZ	901/903 Pine Street, Brooklyn
26-94-BZ	141 Mansion Avenue, Staten Island
289-58-BZ	398-410 Kings Highway, Brooklyn
540-84-BZ	341 Soundview Avenue, Bronx
335-88-BZ	5808/28 Flatland Avenue, Brooklyn
132-97-BZ & 24-06-A	227 Mansion Avenue, Staten Island
111-01-BZ	9001 Ditmas Avenue, Brooklyn
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294-05-A thru 296-05-A	146-34, 36, 38 Pleasant Place, Queens
345-05-A	81 White Plains Avenue, Staten Island
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173-05-A	85-24 168 th Place, Queens
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317-05-A	4 East 3 rd Street, Manhattan
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274-04-BZ 2114 Gravesend Neck Road, Brooklyn
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374-03-BZ thru Taipei Court, Queens
 376-03-BZ
249-04-BZ 205 Parkside Avenue, Brooklyn
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89-05-BZ 18 Heyward Street, Brooklyn
100-05-BZ 223 Water Street, a/k/a 48 Bridge Street, Brooklyn
119-05-BZ 834 Sterling Place, Brooklyn
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199-05-BZ 99 Seventh Avenue, Manhattan
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314-05-BZ 1670 East 23rd Street, Brooklyn
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**MINUTES of Special Hearings,
Wednesday, June 7, 2006**

Morning Calendar 425

Affecting Calendar Numbers:

174-05-A 60 Hudson Street, Manhattan

DOCKETS

New Case Filed Up to June 6, 2006

100-06-BZ

638-640 President Street, Between 4th and 5th Avenue., Block 958, Lot 35 & 36, Borough of **Brooklyn, Community Board: 6**. Under 72-21 - From bulk (not floor area) from height, obstruction in court, and non-complying court regulations of the ZR.

101-06-A

35 Market Street, North side Rockaway Point boulevard at intersection of mapped Beach 202nd Street., Block 16350, Lot 300, Borough of **Queens, Community Board: 14**. General City Law Section 35, Article 3 - Proposed reconstruction and enlargement of an existing single family dwelling.

102-06-A

1 Arcadia Walk , East side Arcadia Walk at interseccion of Oceanside Avenue & Breezy Point Boulevard., Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 35, Article 3 - Proposed reconstruction and enlargement of existing single family dwelling.

103-06-BZ

1324 East 23rd Street, East 23rd Street, between Avenues M and N., Block 7658, Lot 60, Borough of **Brooklyn, Community Board: 14**. SPECIAL PERMIT - 73-622-To seek the enlargement of the existing single family home.

104-06-BZ

3584 Bedford Avenue, Bedford Avenue., north of Avenue O, Block 7678, Lot 84, Borough of **Brooklyn, Community Board: 14**. SPECIAL PERMIT-73-622 - To partially legalize and partially alter a long standing, relatively minor enlargement of an existing single family residence.

105-06-A

240-23 128th Avenue, Corner of 128th Avenue and Hook Creek Boulevard, Block 12866, Lot 1, Borough of **Queens, Community Board: 13**. General City Law Section 35 - To permit the proposed development which rests partially within the mapped, but unbuilt portion of Hook Creek Boulevard.

106-06-BZ

1436 East 28th Street, West side of East 28th Street 280 between Avenue N and Kings Highway, Block 7681, Lot 62, Borough of **Brooklyn, Community Board: 14**. SPECIAL PERMIT - 73-622-To allow the enlargement of a two-family residence.

107-06-BZ

140 East 63rd Street, Northwest corner, block bounded by Lexington and third Avenue, East 62nd and East 63rd Streets., Block 1397, Lot 49, Borough of **Manhattan, Community Board: 8**. SPECIAL PERMIT - 73-36 - To allow a physical culture establishment use in the cellar, subcellar, first floor and second floor of a 22 story mixed use building.

108-06-BZ

143 West 30th Street, Between 6th and 7th Avenues, Block 806, Lot 4, Borough of **Manhattan, Community Board: 5**. Under 72-21 - To permit the proposed 15 story residential development.

109-06-BZ

1201 Avenue Z, North east corner of East 12th Street., Block 7433, Lot 148, Borough of **Brooklyn, Community Board: 15**. Under 72-21 - Proposed 2 1/2 story vertical extension with commercial remaining on first floor and 5 dwelling units above.For toatal floor area, yards, wall height, building height, setback, sky exposure plane and parking requirrements.

110-06-BZ

1473 East 21st Street, 325' north of intersection formed by East 21st Street and Avenue N, Block 7657, Lot 23, Borough of **Brooklyn, Community Board: 14**. SPECIAL PERMIT-73-622 - Extension to propose one family dwelling contrary to 23-141 floor area ratio and open space ratio, 23-461 side yard and 23-47 rear yard.

111-06-BZ

124 Norfolk Street, West side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of **Brooklyn, Community Board: 15**. SPECIAL PERMIT-73-622 - To allow the legalization in part of the enalrgement of a single family residence.

DOCKET

112-06-BZ

507 East 176th Street, Northwest corner of Third Avenue and 176th Street, Block 2924, Lot 38,39,42, Borough of **Bronx, Community Board: 6**. Under 72-21 - To permit the construction of a seven-story and cellar community facility/residential building within an accessory supportive social services.

113-06-BZ

3030 Broadway, Broadway, Amsterdam Avenue, West 116th and West 120th Streets, Block 1973, Lot 1, Borough of **Manhattan, Community Board: 8**. Under 72-21 - To allow a proposed 13-story academic building to be constructed on an existing university campus (Columbia University). The project requires lot coverage and height and setback waivers and is contrary to Z.R. sections 24-11 and 24-522.

114-06-BZ

124 Norfolk Street, West side of Norfolk Street between Shore Boulevard and Oriental Boulevard., Block 8756, Lot 10, Borough of **Brooklyn, Community Board: 15**. SPECIAL PERMIT-73-622 - To allow the legalization of the enlargement of a single family residence, which exceeds the allowable floor area ratio and lot coverage and provides less than the minimums open space required.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JULY 18, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 18, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

405-71-BZ

APPLICANT – Sheldon Lobel, P.C., for Sarlanis Enterprises, LLC, owner; Amerada Hess Corporation, lessee.

SUBJECT – Application April 21, 2006 - Pursuant to ZR 73-11 for the proposed redevelopment of an existing automotive service station (Shell Station) with accessory uses (UG16) to a Gasoline Service Station (Hess) with an accessory convenience store (UG16).

PREMISES AFFECTED – 3355 East Tremont Avenue, eastern side of East Tremont Avenue at the intersection with Baisley Avenue, Block 5311, Lot 7, Borough of The Bronx.

COMMUNITY BOARD #10BX

286-79-BZ

APPLICANT – Walter T. Gorman, P.E., for Amerada Hess Corp., owner.

SUBJECT – Application April 13, 2006 - Proposed Extension of Term for an automobile service station located in a C1-2/R2 zoning district. The application also seeks to waive the Board's rules of practice and procedure and extend the term of the special permit for a period of ten (10) years which expired on June 19, 2004 and extend it to June 19, 2014.

PREMISES AFFECTED – 219-28 to 219-38 Hillside Avenue, southeast corner of Springfield Boulevard, Block 10680, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

182-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2465 Broadway Associates, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 - Pursuant to ZR 73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar, first and second floors of a commercial building. This is a companion case to 183-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2465/73 Broadway, west Broadway, 50' south of intersection with 92nd Street, Block 1239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

183-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Haymes Broadway, LLC, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 - Pursuant to ZR 73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar of a commercial building. This is a companion case to 182-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2473/5 Broadway, southwest corner of Broadway, and West 92nd Street, Block 1239, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application April 12, 2006 -pursuant to ZR 72-01 for the Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for the construction of a two story building for commercial use (Retail UG6) in a residential use district.

PREMISES AFFECTED – 70 East 184th Street, aka 2363 Morris Avenue, south side of East 184th Street, corner formed by the intersection of Morris Avenue, Block 3183, Lot 42, Borough of The Bronx.

COMMUNITY BOARD #5BX

APPEALS CALENDAR

161-05-A

APPLICANT – Tottenville Civic Association, for Willow Avenue Realty, Inc., owner.

SUBJECT – Application July 15, 2005 – Appeal challenging a Department of Buildings determination, dated June 12, 2005, that the subject premises is comprised of two separate zoning lots based on DOB 's interpretation of the definition of ZR 12-10" zoning lot"(c) & (e) and therefore could be developed as individual lots.

PREMISES AFFECTED – 7194, 7196 Amboy Road and 26 Joline Avenue, Block 7853, Lots 47, 74, Richmond, Borough of Staten Island.

COMMUNITY BOARD #3SI

12-06-A

APPLICANT – Stuart A. Klein, Esq., for Carl F. Mattone, owner.

SUBJECT –Application January 23, 2006 - Appeal seeking a reconsideration of Department of Buildings refusal to revoke permits for a single family home which allowed numerous violations of the Zoning Regulation required side yards, waterfronts yards, and bulk regulations. Premises is located within R1-2 Zoning District.

PREMISES AFFECTED – 37-19 Regatta Place, bounded by Bay Street and the Little Neck Bay, Block 8071, Lot

CALENDAR

32, Borough of Queens.

COMMUNITY BOARD #11Q

JULY 18, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 18, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

363-05-BZ

APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.

SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. sections 23-141, 23-45(a), 23-462(a), 23-861, and 25-23.

PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.

COMMUNITY BOARD #4Q

32-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, by Steven M. Sinacori, for Manhattan College, owner.

SUBJECT – Application February 28, 2006 – Special permits pursuant to Z.R. sections 73-482 and 73-49 to allow an accessory group parking facility in excess of 150 spaces and to allow roof-top parking. Zoning variance pursuant to Z.R. Section 72-21 is also proposed to allow proposed parking facility to violate applicable height and setback requirements of Z.R. Section 33-431. Premises is located within an R6/C2-3 zoning district.

PREMISES AFFECTED – 5935 Broadway, east side of Broadway between 242nd Street and Manhattan College Parkway, Block 5776, Lot 632, Borough of The Bronx.

COMMUNITY BOARD #8BX

54-06-BZ

APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.

SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. 72-21 to permit the development of a three-story & cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family dwellings which

would be demolished as part of the proposal. The proposal seeks to vary ZR Sections 113-51 (Floor Area); 113-55 & 23-631 (Perimeter Wall Height, Total Height & Sky Exposure Plane); 113-542 & 23-45 (Front Yard & Setback); 113-543 & 23-461(a) (Side Yard); 113-544 (Rear Yard); 113-561 & 23-51 (Parking); and 113-22 (Loading Berth).

PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of Brooklyn.

COMMUNITY BOARD #12BK

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. 42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 6, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, March 28, 2006 as printed in the bulletin of April 6, 2006, Volume 91, Nos. 13 & 14. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

32-38-BZ

APPLICANT – Steven M. Sinacori, Esq., for 88 Third Avenue Associates, owner.

SUBJECT – Application March 21, 2006 – Reopening for an amendment to the resolution to eliminate the twenty year (20) term for the change in occupancy from Manufacturing (UG17) to Office (UG6) in a four story and cellar building located in an R-6 zoning district, as adopted by the Board of Standards and Appeals on March 16, 1993.

PREMISES AFFECTED – 88 Third Avenue, west side of Third Avenue, between Bergen and Dean Streets, Block 197, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to eliminate the term of a previously granted variance; and

WHEREAS, a public hearing was held on this application on May 9, 2006, after due notice by publication in *The City Record*, and then to decision on June 6, 2006; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of Third Avenue between Bergen and Dean Streets; and

WHEREAS, the lot is located within an R6 zoning district, and is surrounded primarily by residential uses, there are also some manufacturing uses in the vicinity; and

WHEREAS, the lot area is approximately 43,500 sq. ft. and is improved upon with an approximately 98,000 sq. ft., four-story building; and

WHEREAS, in 1938, the Board granted an application under the referenced calendar number to permit use of the site as a milk plant; and

WHEREAS, subsequently, in 1961, the Board approved a change of use in a portion of the building from milk plant to UG 17 manufacturing use; and

WHEREAS, most recently, on March 19, 1993, the Board, pursuant to ZR § 11-413, authorized a change of the UG 17 manufacturing use to UG 6 office use; and

WHEREAS, the term of the authorization was limited to 20 years, to expire on March 19, 2013; and

WHEREAS, the application is brought on behalf of the New York City Human Resources Administration (HRA); and

WHEREAS, HRA occupies the first and second floors of the building and the third and fourth floors are currently vacant; and

WHEREAS, HRA intends to expand its operations to the third and fourth floors, which requires extensive renovations including the installation of an HVAC system, computer wiring, and new bathrooms; and

WHEREAS, HRA asserts that it has already invested more than \$6.5 million for renovations and plans to contribute another \$1 million; and

WHEREAS, HRA represents that its lender requires that there be no term limit on the authorization, in order to secure funding for the renovations; and

WHEREAS, the Board notes HRA's long-term commitment to the building; and

WHEREAS, upon review, the Board finds the requested elimination of the twenty-year term appropriate, provided that there is compliance with the conditions set forth below and in the prior resolutions.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 19, 1993, so that as amended this portion of the resolution shall read: "to eliminate the term of the previously granted change of use; *on condition*:

THAT any change in ownership or occupancy of the subject building shall require the prior approval of the Board;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (Alt. No. 300349825)

Adopted by the Board of Standards and Appeals, June 6, 2006.

295-77-BZ

MINUTES

APPLICANT – Walter T. Gorman, P.E., for Alfred M. Lama, Barnik Associates LLC, owner; Exxon Mobil, lessee.

SUBJECT – Application September 27, 2005 – Reopening for extension of term/waiver of a variance Z.R. §72-21 for the continued use of a gasoline service station which expired on October 1, 2003 for an additional ten (10) years; and an amendment to legalize the conversion of a portion of the service building from office/sales and attendant’s area to an accessory convenience store, the erection of a trash enclosure, air pump tower and car vacuum, a public telephone and wooden planter boxes. The premise is located in an C1-2 in R4 zoning district.

PREMISES AFFECTED – 87-10 Northern Boulevard, southside blockfront between 87th and 88th Street, Block 1435, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Walter T. Gorman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an amendment to the previously granted variance, and an extension of term; and

WHEREAS, a public hearing was held on this application on April, 4, 2006, after due notice by publication in *The City Record*, with continued hearing on May 16, 2006, and then to decision on June 6, 2006; and

WHEREAS, Community Board 3, Queens, recommends approval of this application on condition that fencing and planting improvements are implemented and that the restrooms be made handicapped accessible; and

WHEREAS, the premises is located on the south side of Northern Boulevard between 87th and 88th Streets; and

WHEREAS, the site is located within an R4 (C1-2) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 1, 1957 when, under BSA Cal. No. 395-39-BZ, Vol. II, the Board granted an application for a gasoline service station; and

WHEREAS, subsequently, on December 5, 1989, under the subject calendar number and, the Board granted an amendment to permit a re-design of the service station; and

WHEREAS, most recently, on November 23, 1993, the Board granted an extension of term of the 1989 grant, to expire on October 1, 2003; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, in addition to a new extension of term, the applicant requests an amendment to legalize the conversion of a portion of the service building from office/sales use to an accessory convenience store; the erection of a trash enclosure;

the installation of an air tower and car vacuum in front of the service building; the installation of a public telephone along the westerly lot line; and the installation of wooden planter boxes; and

WHEREAS, at hearing, the Board asked the applicant to investigate the possibility of designing a handicapped accessible restroom; and

WHEREAS, at the Board’s suggestion, the applicant proposed a larger restroom that could provide better maneuverability; and

WHEREAS, the applicant also revised the site plans to include six ft. tall opaque fencing with slats to provide screening for the adjacent neighbors; and

WHEREAS, additionally, the applicant proposes to remove enough accessory parking spaces to provide two handicapped accessible parking spaces; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested extension of term and the legalization of the convenience store appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on December 5, 1989, as subsequently extended, so that as amended this portion of the resolution shall read: “to legalize the conversion of a portion of the service building from office/sales use to an accessory convenience store; the erection of a trash enclosure; the installation of an air tower and car vacuum in front of the service building; the installation of a public telephone along the westerly lot line; and the installation of wooden planter boxes; and to extend the term of ten years from October 1, 2003 to expire on October 1, 2013, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received May 1, 2006’–(6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on October 1, 2013;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review and approve the layout of the onsite parking;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 402212191)

Adopted by the Board of Standards and Appeals, June 6, 2006.

MINUTES

545-78-BZ

APPLICANT – Petraro & Jones, for Cotaldo Vasapolli, owner.

SUBJECT – Application January 15, 2004 – Reopening for an extension of term of a variance for a commercial vehicle storage establishment in an R4 zoning district. The term expired on March 27, 2002. The application also seeks a waiver of the Board’s rules of practice and procedure for an extension of term application filed more than one year, but less than two years, following expiration of the term. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 901/903 Pine Street, west side of Pine Street 250 feet north of intersection of Pine Street and Cozine Avenue. Block 4547, Lot 49 (formerly 49/50), Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Steven Simicich.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term of a previously granted variance; and

WHEREAS, a public hearing was held on this application on April 4, 2006, after due notice by publication in *The City Record*, with continued hearing on May 16, 2006, and then to decision on June 6, 2006; and

WHEREAS, a committee of the Board conducted a site visit of the subject premises; and

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of this application; and

WHEREAS, the premises is a 4,000 sq. ft. lot located on the west side of Pine Street, 250 ft. north of the intersection of Pine Street and Cozine Avenue; and

WHEREAS, the site is located within an R4 zoning district and is improved upon with a 4,000 sq. ft., one-story masonry building occupied as a commercial vehicle storage establishment for a contractor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 27, 1978, when, under the subject calendar number, the Board granted a variance for the vehicle storage establishment with a 15-year term; this term expired on March 27, 1994; and

WHEREAS, on March 19, 1996, the Board granted an extension of term for only three years, to expire on March 27, 1997; and

WHEREAS, further, the grant also provided that no waiver of the Board’s Rules of Practice and Procedure would be available to extend the time to seek a new extension of term; and

WHEREAS, the resolution for this extension of term indicates that evidence was presented to the Board concerning a

lack of compliance with the prior resolution, including improper usage of the site, significant truck traffic, and impermissible fuel pumps; and

WHEREAS, on October 28, 1997, the Board again extended the term for a period of five years, to expire on March 27, 2002, and the resolution included the same condition that no waiver of the Board’s Rules would be available; and

WHEREAS, the applicant is now before the Board for an additional five year term, and represents that the terms and conditions of prior resolutions have been complied with, including that the vehicle storage will be restricted to the contractor’s establishment; and

WHEREAS, the applicant represents that this will be the last application for an extension of term, as the business at the site will be closing; and

WHEREAS, as noted above, the Board conducted a site visit and did not observe any objectionable effects from the establishment, though it did appear that new residential development was occurring on the subject block; and

WHEREAS, since the Board observed significant conforming development in the immediate vicinity, the Board concludes that any extension of the term of this grant should be limited to a single term; this will allow the site to be developed residentially and will also minimize any impact on the character of the community, which is becoming predominantly residential; and

WHEREAS, accordingly, based upon the submitted evidence and its site visit, the Board finds the requested extension appropriate to grant for a single, non-renewable term of five years, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on March 27, 1978, as subsequently extended, so that as amended this portion of the resolution shall read: “to extend the term for five years from June 6, 2006, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received January 15, 2006’-(2) sheets and ‘April 12, 2006’-(1) sheet; and *on further condition*:

THAT the term of this grant shall be for five years from the last expiration date, to expire on June 6, 2011;

THAT upon expiration of the term, the premises shall only be used for conforming uses;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

MINUTES

(DOB Application No. 301664553)

Adopted by the Board of Standards and Appeals, June 6, 2006.

26-94-BZ

APPLICANT – Rampulla Associates Architects, for CDC Realty, LLC, owner.

SUBJECT – Application March 24, 2006 – Reopening for an Extension of Term for a Special Permit renewal for an eating and drinking establishment (UG6, located in a C3A zoning district.

PREMISES AFFECTED – 141 Mansion Avenue, intersection of Mansion Avenue and McKeon Avenue, Block 5201, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term of a previously granted special permit for an eating and drinking establishment; and

WHEREAS, a public hearing was held on this application on May 9, 2006, after due notice by publication in *The City Record*, and then to decision on June 6, 2006; and

WHEREAS, a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Babbar, conducted a site visit of the subject premises; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the premises is a 10,400 sq. ft. lot located at the intersection of Mansion and McKeon Avenues; and

WHEREAS, the site is located within a C3A zoning district, within the Special South Richmond district (SSRD), and is improved upon with a 4,270 sq. ft. two-story building occupied as an eating and drinking establishment doing business as the Marina Grande (the “Restaurant”); and

WHEREAS, the Restaurant has two dining rooms and a clam bar, with a total occupancy of 244 persons, as well as a 5,210 sq. ft. outdoor attended parking area for 28 cars; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 4, 1984, when, under BSA Cal. No. 826-84, the Board granted a special permit under ZR § 73-242 for an eating and drinking establishment for a term of five years; this term expired on April 2, 1990; and

WHEREAS, on March 5, 1996, under the subject calendar number, the Board granted a reinstatement of the lapsed special permit, and extended the term for an additional five years to expire on March 5, 2001; this grant was extended again for five years on December 4, 2001, expiring on March 5, 2006; and

WHEREAS, the Restaurant is now before the Board for an additional five year term; and

WHEREAS, at hearing, the Board asked about compliance with certain conditions indicated on the previously approved site plan, specifically: (1) whether a “no left turn” sign was placed at the exit from the Restaurant’s accessory parking lot, as required; and (2) whether a storage container in the parking lot, which was not part of the approved site plan, had been removed; and

WHEREAS, in response, the applicant provided a picture of the sign, and a picture of the parking lot showing that the container had been removed; and

WHEREAS, at hearing, the Board also asked whether perpendicular parking was allowed on Mansion Avenue; and

WHEREAS, the applicant responded perpendicular parking on Mansion Avenue near the premises had been allowed since 1992 and that DOT was in the process of placing signage allowing such perpendicular parking, and submitted a work order from DOT for such signage; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested extension appropriate to grant, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on March 5, 1996, as subsequently extended, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for an eating and drinking establishment for five years from March 5, 2006, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received May 23, 2006’–(3) sheets and ‘June 6, 2006’– (1) sheet; and *on further condition*:

THAT the term of this grant shall be for five years from the last expiration date, to expire on March 5, 2011;

THAT the hours of operation shall be from 8 a.m. to midnight Sunday through Thursday, and 8 a.m. to 2 a.m. Friday and Saturday;

THAT the accessory parking area shall be attended;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT the layout of the parking area shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 500824236)

Adopted by the Board of Standards and Appeals, June 6, 2006.

MINUTES

289-58-BZ

APPLICANT – Eric Palatnik, P.C., for David Oil Corporation, owner.

SUBJECT – Application April 25, 2006 – Extension of Term of a variance for ten years, which expired on November 25, 2005, for a gasoline service station (Sunoco Station) and an Amendment to legalize a small convenience store as an accessory to the UG16-Automotive Service Station. The premise is located in an C2-3/R-7A zoning district.

PREMISES AFFECTED – 398-410 Kings Highway, southwest corner of Kings Place, Block 6678, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for decision, hearing closed.

540-84-BZ

APPLICANT – Kenneth H. Koons, for Herman Pieck, owner.
SUBJECT – Application December 8, 2005 – Pursuant to section Z.R. §52-332 to legalize the change in use of a custom cabinet workshop (UG16A) to auto repair shops (UG16B) and to extend the term of the variance for ten years. The previous term expired June 10, 2006. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, southwest corner of Bolton Avenue, Block 3473, Lot 43, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Caroline Harris and Kenneth H. Koons.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for decision, hearing closed.

335-88-BZ

APPLICANT – Eric Palatnik, P.C., for 5808 Flatlands Realty Corp., owner.

SUBJECT – Application December 16, 2005 – Pursuant to Z.R. §11-411 for the Extension of Term of Variance which

expired on July 3, 2005 and to waive the Rules of Practice and Procedure to file more than 30 days after expiration. The use on site is for an automotive service station (Sunoco) with minor auto repairs and accessory convenience store.

PREMISES AFFECTED – 5808/28 Flatland Avenue, southwest corner of East 59th Street, and Flatlands Avenue, Block 7784, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for decision, hearing closed.

132-97-BZ/24-06-A

APPLICANT – Alan R. Gaines, Esq., for Deti Land, LLC, owner; Fiore Di Mare LLC, lessee.

SUBJECT – Application June 7, 2005 and January 3, 2006 – Extension of Term/Amendment/Waiver for an eating and drinking establishment with no entertainment or dancing and occupancy of less than 200 patrons, UG 6 located in a C-3 (SRD) zoning district. Proposed legalization of four on-site parking spaces for an eating and drinking establishment (Fiore Di Mare) located in the bed of a mapped street, in contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 227 Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island.

COMMUNITY BOARD# 3SI

APPEARANCES –

For Applicant: Joseph D. Manno, Esq.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for decision, hearing closed.

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for George Marinello, owner; Wendy's Restaurant, lessee.

SUBJECT – Application January 12, 2006 – Pursuant to Z.R. §§72-21 and 72-22 for the extension of term for ten years for an accessory drive thru facility at an eating and drinking establishment (Wendy's) which one-year term expired February 1, 2006. An amendment is also proposed to extend the hours of operation of the accessory drive-thru facility to operate until 4 a.m. daily. The premise is located in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, between 91st Street and Remsen Avenue, Block 8108, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD#17BK

APPEARANCES –

MINUTES

For Applicant: Eric Palatnik.

For Opposition: Esme Trotman and Maria Shake.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

400-04-A

APPLICANT – Sheldon Lobel, P.C., for Sangrok Lee, owner.
SUBJECT – Application December 23, 2004 – Proposed construction of 2, 2 story semi-detached 2 family homes which lie in the bed of a mapped street, (Depew Avenue) is contrary to GCL Section 35. Premises is located in an R3-1 Zoning District.

PREMISES AFFECTED – 42-01 and 42-03 249th Street, 41st Avenue, Little Neck Parkway, 43rd Avenue, and 249th Street, Block 8127, Tentative Lot Number 42 and 45, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Zara Fernades.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 23, 2004, acting on Department of Buildings Application Nos. 401994277 and 401994286 reads, in pertinent part:

“Building contrary to GCL 35.”; and

WHEREAS, a public hearing was held on this application on June 6, 2006, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated January 27, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated February 23, 2006, the Department of Environmental Protection has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 11, 2006, the Department of Transportation has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated November 23, 2004, acting on Department of Buildings Application Nos. 401994277 and 401994286, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed

with the application marked “Received June 6, 2006”- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 6, 2006.

162-05-A

APPLICANT – Jay Segal, Esq., Greenberg & Traurig, LLP, for William R. Rupp, owner.

SUBJECT – Application July 15, 2005 – To appeal a final determination from the Department of Buildings dated June 15, 2005 in which they contend that the a privacy wall must be demolished because it exceeds the height limitation set by the Building Code and that the project engineer has failed to show that the Wall has been engineered and built according to code.

PREMISES AFFECTED – 19-21 Beekman Place, a/k/a 461 East 50th Street, located at east side of Beekman Place between East 50th Street and East 51st Street, Block 1361, Lot 117, Borough of Manhattan.

COMMUNITY BOARD#6BK

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Babbar.....1

Negative: Chair Srinivasan, Commissioner Chin and Commissioner Collins.....3

THE RESOLUTION–

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Manhattan Borough Commissioner, dated June 15, 2005 (the “Final Determination”), issued as to a structure that the Department of Buildings (“DOB”) deemed to be unsafe and as to DOB Permit No. 103981318 (the “Permit”), under which part of this structure was built; and

WHEREAS, the Final Determination reads, in pertinent part: “This is to set forth the Department’s final determination, pursuant to the April 8, 2005 stipulation in Rupp v. NYC Department of Buildings (the “Stipulation”) for purposes of appeal to the Board of Standards and Appeals (“BSA”). The referenced application and this determination concern construction of a brick and masonry wall (the “Wall”) that rises to a height of approximately 60 feet above the roof of the second story of the Premises.

MINUTES

By letter dated February 15, 2005, the Department set forth objections to the structural adequacy or reliability of the Wall and issued a Stop Work Order. On February 18, 2005 the Department issued an Emergency Declaration directing that the Wall be demolished. Following the commencement of an Article 78 proceeding challenging the Emergency Declaration and the issuance of a temporary restraining order on February 28, 2005 prohibiting the Department from demolishing the Wall or from otherwise interfering with Mr. Rupp's enjoyment of the Premises, Mr. Rupp's representatives and the Department have had interaction pursuant to the terms of the Stipulation regarding temporary measures to shore the Wall pending appeal to the BSA.

As of this date, the Department has accepted from Louis Silbert, P.E. submissions indicating that the Wall has been temporarily stabilized by means of temporary construction. However, Mr., Silbert's submissions failed to show that the Wall, as constructed, has been engineered or otherwise designed and built in accordance with the Building Code. Specifically, there is insufficient evidence that the Wall as designed and built has adequate lateral support. While Mr. Silbert has submitted sketches and calculations purporting to demonstrate otherwise, these submissions are not based on the as-built construction nor on the construction proposed in the original submission and accordingly have not undergone technical review. Because construction of the Wall is questionable, pursuant to the provisions of Administrative Code §27-597, it must be demolished.

Apart from the deficiencies detailed above, the Wall is too high. If and when the Wall is proposed to be constructed in a manner that accords with Code and with proper engineering practices, consistent with §27-509, it will only be allowed to a height of six feet above the roof of the second story portion of the building. This is the Department's final determination.”; and

WHEREAS, appellant is the owner of the subject premises and was represented by counsel; and

WHEREAS, DOB and the owner of the adjacent building at 23 Beekman Place also appeared and gave testimony as to the instant appeal; and

WHEREAS, a public hearing was held on this application on December 6, 2005 after due notice by publication in *The City Record*, with continued hearings on February 7, 2006, April 4, 2006, and then to decision on June 6, 2006; and

WHEREAS, the premises had a site inspection conducted by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioners Chin and Collins; and

WHEREAS, the premises is located within an R8B zoning district and is occupied by a two and five-story townhouse building (the “19 Beekman Building”); the two-story portion is at the rear of the site and the five-story portion is near the Beekman Place street line; and

WHEREAS, 23 Beekman, the adjacent premises, is occupied by a nine-story multiple dwelling (the “23 Beekman Building”); and

WHEREAS, the lot line between 19 and 23 Beekman contains a party wall, which, as set forth on a plan submitted by appellant, extends the length of the five-story portion of the 19

Beekman Building, for approximately 42 ft.; and

WHEREAS, as noted in the Final Determination, this appeal arises from DOB’s revocation of the Permit and its determination that the structure constructed under the Permit (the “New Structure”), as well as the previously existing structure on top of which the new structure was built (the “Existing Structure”), is unsafe and needs to be demolished (the New and Existing Structures are hereinafter collectively referred to as the “Structure”); and

WHEREAS, the Board notes that the Existing Structure is an eight inch thick masonry vertical extension added to the roof of the two story section of the 19 Beekman Building; it rises to a height of 15’-0” at approximately 22’-8” from the street line, then sets back 9’-6” and rises another 11’-6” to a total height of 26’-6”;

WHEREAS, at hearing, the Board questioned how the Existing Structure was constructed; and

WHEREAS, in response, appellant provided copies of plans professionally certified under DOB Application No. 102597799; and

WHEREAS, Application No. 102597799 was for an alteration permit; the job description, as set forth in DOB’s Building Information System, reads: “New exterior balcony to be stucco over steel structure; New ceramic tile roof surface to replace existing; Extend metal roof structure”; and

WHEREAS, Plan Sheet A11 for this application, submitted by appellant, includes the following notation “New brick wall to be brick both sides with case limestone cap”; and

WHEREAS, however, the height dimension for the “new brick wall” appears to be 33’-0”, whereas the Existing Structure is 26’-6” high; and

WHEREAS, while the Final Determination does not reference the permit that was issued through professional certification under DOB Job No. 102597799, it does address the Existing Structure, purportedly constructed under it; and

WHEREAS, the Board notes that the Existing Structure, since it is built on top of the two-story section of the 19 Beekman Building, is not adjacent or attached to the party wall between the 19 Beekman Building and the 23 Beekman Building; and

WHEREAS, the Permit was sought to allow the construction of the New Structure, the 33’-6” high, eight inch thick masonry addition to the Existing Structure; and

WHEREAS, the Permit was initially applied for on November 29, 2004 and was obtained on December 1, 2004; and

WHEREAS, like the Existing Structure, the New Structure is also not adjacent or attached to the party wall; and

WHEREAS, as indicated on the DOB’s Business Information System, the Permit was obtained under Directive 14 of DOB’s procedures, which provides for a limited review of plans and application materials; the examination is limited to zoning compliance only; and

WHEREAS, the job description in the Permit application reads: “Installation of brick veneer on party wall at roof level. No changes to uses, egress or occupancy.”; and

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WHEREAS, as indicated on the plan submitted with the Permit application, the scope of work included the installation of a new four inch brick veneer on the existing party wall above the roof level of the five-story section of the 19 Beekman Building, and a new extension of the Existing Structure, located on the roof level of the two-story section of the 19 Beekman Building; and

WHEREAS, the Board observes that both the Permit application and an "Additional Information" Form, dated January 27, 2005, submitted by the 19 Beekman project engineer, indicate that the scope of work is limited to installation of brick veneers, and that any free-standing wall would be anchored to the party wall; and

WHEREAS, the applicant states that construction under the Permit began shortly after its issuance, and the New Structure was fully built in late December 2004; and WHEREAS, in December of 2004, DOB initiated an audit of this construction and the Permit and sent a notice to the project engineer on January 3, 2005, indicating its intent to revoke the Permit in ten days unless additional information as to the Permit was submitted; and

WHEREAS, on January 11, 2005, the engineer responded to DOB; and

WHEREAS, after further communication between DOB and the engineer, DOB approved revised plans on or about January 28, 2005 and indicated on them "audit accepted"; and

WHEREAS, DOB raised two new objections in a notice dated February 1, 2005; this notice states that DOB discovered records indicating different field conditions than what was shown on the revised plans, and requested clarification of the anchoring system for the New Structure; the notice also requested that the applicant provide "structural details of 30 feet high free standing masonry wall" and advised that "masonry/reinforced masonry controlled inspections are required"; and

WHEREAS, subsequently, in a letter dated February 15, the Manhattan Borough Commissioner notified appellant and the project engineer that field inspections had raised questions about the structural stability of the New Structure, and that its compliance with the Building Code had not been resolved; the letter stopped all work at the premises and requested that appellant and the engineer meet with the Borough Commissioner by February 17, 2005; and

WHEREAS, the February 15 letter indicates that that DOB had significant issues with the proposed anchor system that would allegedly connect the New Structure with the adjacent wall; and

WHEREAS, in particular, point 3 of the February 15 letter states that a DOB inspection did not reveal steel angles needed to transfer loads, as shown on the revised plans; point 8 indicates that DOB questioned whether the angles, even if installed, would comply with Building Code anchorage requirements for veneers; and

WHEREAS, thus, DOB responded to an apparent discrepancy between what is shown on the plans and was ultimately constructed versus what was represented to DOB by the project engineer in the application and the "Additional Information"

form, insofar as the New Structure was not comparable to a veneer since it was not adjacent to a party wall and appeared to have been constructed contrary to approved plans and the Building Code; and

WHEREAS, on February 18, 2005, the Borough Commissioner issued a declaration that the Structure was unsafe and needed to be repaired or demolished immediately; and

WHEREAS, also on this date, the Borough Commissioner permitted the lift of the stop work order to allow only for emergency remediation and shoring of the Structure; and

WHEREAS, on February 23, the project engineer submitted a letter to DOB that purported to respond to DOB's February 15 letter; and

WHEREAS, a new engineer and architect retained by the owner of 19 Beekman then consulted with the Borough Commissioner and, in a letter dated February 24, 2005, proposed an exterior steel frame to support the Structure; and

WHEREAS, this letter also purportedly responded to the points made by DOB in its February 15 letter, referenced above; and

WHEREAS, however, on February 25, the Borough Commissioner performed a field inspection and determined that notwithstanding the temporary measures taken to shore the structure, the order to demolish in the February 18 declaration needed to be effected immediately; and

WHEREAS, appellant challenged the declaration in an Article 78 proceeding, which was dismissed pursuant to an April 8, 2005 stipulation that the disagreement would be resolved in the first instance by a determination of this Board; and

WHEREAS, DOB then issued the Final Determination and the instant appeal was filed; and

WHEREAS, appellant states that a representative of 19 Beekman met with DOB's executive engineer in August of 2005, and the engineer allegedly took a position contrary to that stated in the Final Determination; and

WHEREAS, however, DOB, through its counsel, repudiated the determination of the executive engineer, and stated that the Final Determination was the official position of the Department; and

WHEREAS, in any event, the Board has no jurisdiction to review a determination of the executive engineer as a final determination of DOB; consequently, the appeal proceeded to hearing; and

WHEREAS, the appellant's initial submission advances three primary arguments: (1) Building Code § 27-509 does not apply to the Structure because it is not a fence; (2) DOB has approved other similar structures in Manhattan and has not provided a "reason or justification for the inconsistent treatment" of the Structure; and (3) the Structure is structurally sound and does not need to be demolished; and

WHEREAS, as to the first argument, the appellant claims that Building Code § 27-509 governs the height only of fences, and that the Structure is a wall, not a fence; and

WHEREAS, in disputing that the Structure is a fence, appellant notes that it is referred to as a wall by DOB in the February 15 letter, the February 18 declaration, and the Final

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Determination; and

WHEREAS, Building Code § 27-509 is the sole provision of Article 18 “Fences” in Subchapter 7 of the Code, which pertains to special uses and occupancies, and provides, in pertinent part, “In residence districts, no fences, whether of masonry, steel, wood, or any other materials shall be erected to a height of more than six feet above the ground, except that fences used in conjunction with nonresidence buildings and public playgrounds, excluding buildings accessory to dwellings, may be erected to a height of fifteen feet. Higher fences may be permitted by the commissioner where required for the enclosure of public playgrounds, school yards, parks and similar public facilities.”; and

WHEREAS, during the course of the hearing process, the appellant offered two different characterizations of the Structure as a wall, first alleging it is a screen (or privacy) wall, and then suggesting that it is a non-load bearing parapet wall; and

WHEREAS, as to the first characterization, appellant states that the Oxford Dictionary of Architecture defines the term “screen wall” as: “1. Solid unperforated wall hiding something, e.g. a court in front of a house. 2. Retaining wall in a garden, often decorated with niches, etc. 3. Wall carried up between columns.”; and

WHEREAS, presumably appellant considers the Structure a “solid unperforated wall hiding something” since the Board observes that the structure obviously is not a garden retaining wall and is also not a wall carried up between columns”; and

WHEREAS, the Board observes that this definition of “screen wall,” provided by the appellant, relates to the function of a structure, and suggests that the purpose is to hide something; and

WHEREAS, the Structure abuts the building wall of the 23 Beekman Building, so presumably appellant believes it hides this building wall, or that it hides the roof of the two-story portion of the 19 Beekman Building from the 23 Beekman premises; and

WHEREAS, in response to appellant’s characterization of the Structure as a “screen wall”, DOB states that the function of a “screen wall” and a “fence” are very similar, such that any distinction between the two is not meaningful; and

WHEREAS, DOB cites to Ballentine’s Law Dictionary, which defines a “fence”, in pertinent part, as “a visible or tangible obstruction which may be a hedge, ditch, wall, trestle, frame of wood, wire, rails of any line of obstacle interposed between two portions of land so as to part off and shut in the land and set it off as private property or for the purpose using it separately from the adjacent land of the same owner” (*emphasis added*); and

WHEREAS, DOB argues that “hiding something” is not functionally different than providing a “line of obstacle interposed between two portions of land so as to part off and shut in the land and set it off as private property”; and

WHEREAS, the Board agrees and notes the two definitions are not mutually exclusive: a “screen wall” may be a “fence” and vice versa; and

WHEREAS, in fact, the Ballentine’s definition of “fence”

includes walls, since walls can function as fences, in that they can be a visible obstruction or line of obstacle between two portions of land, that sets off private property; and

WHEREAS, here, the Structure arguably both hides the 23 Beekman Building and sets off the 19 Beekman premises from the 23 Beekman premises; thus, functionally, it meets both the definition of “screen wall” offered by appellant and the definition of “fence” used by DOB; and

WHEREAS, thus, appellant’s insistence that the Structure is intended to be a “screen wall” does not negate DOB’s determination that the Structure is a fence for Building Code enforcement purposes; and

WHEREAS, appellant’s second categorization is that the structure is a non-load parapet bearing wall, which is a conflation of two defined terms in the Building Code; and

WHEREAS, Building Code § 27-232 defines “non-load bearing” as follows “As applied to a wall or partition, shall mean one that supports no vertical load other than its own weight”; and

WHEREAS, appellant argues that the Structure does not support any weight other than its own, and is therefore non-load bearing; and

WHEREAS, even assuming this to be true, the Board does not find this compelling, as fences are typically non-load bearing; and

WHEREAS, appellant then argues that the Structure is also a parapet wall; and

WHEREAS, Building Code § 27-232 defines “parapet” as follows: “The continuation of an exterior wall, fire wall, or party wall above the roof line”; and

WHEREAS, appellant argues that the Structure, even though it was constructed in 2001 and 2005, well after the two-story section of the 19 Beekman Building was built, is an extension of an exterior wall of the two-story section; and

WHEREAS, the appellant argues that while the Building Code establishes a minimum height for a parapet, there is no maximum height; and

WHEREAS, appellant states that Building Code § 27-305, which sets forth height limitations of buildings, provides the maximum heights of parapet walls, as set forth in the referenced Tables 4-1 and 4-2; and

WHEREAS, these tables do not reference parapets specifically, but instead set forth maximum heights of walls generally based upon whether a building is sprinklered, as well as its occupancy code and construction class; and

WHEREAS, the Board has reviewed these two tables and notes that for many occupancy codes and construction classes, there is no Building Code height limit if the building is sprinklered; and

WHEREAS, thus, categorization of structures of this type as parapets is contrary to common sense: if parapet wall height is unregulated by the Code in many instances, parapets as high as the overall zoning height limit could be constructed on top of a building without any regulation whatsoever; and

WHEREAS, in those zoning districts without a height or sky exposure plane limitation, this means independent non-load

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bearing structures could be constructed on the tops of roofs to any height; and

WHEREAS, moreover, and most importantly, the Board again observes that even assuming that the Structure is a non-load bearing parapet wall, that does not prevent DOB from properly categorizing it as a fence as well, especially where it functions not as a parapet but a fence; and

WHEREAS, as to the categorization of the Structure as a fence by DOB, the Board notes that the Building Code does not define “fence” or “wall”; and

WHEREAS, however, Building Code § 27-229 provides, in pertinent part “Where terms are not defined they shall have their ordinarily accepted meanings or such as the context may imply.”; and

WHEREAS, thus, DOB is at liberty to apply a reasonable definition of a term, and may take into account the context in which said definition is applied; and

WHEREAS, here, DOB gave the word “fence” its ordinary meaning based on a reasonable definition of the word from a respected legal dictionary, and determined that the Structure met the definition, based upon an assessment of its function and its location between two buildings; and

WHEREAS, the Board finds this rational, as it allows DOB to apply a definition that will best address the fundamental purpose of the Building Code; and

WHEREAS, Building Code § 27-102 provides: “The purpose of this code is to provide reasonable minimum requirements and standards, based upon current scientific and engineering knowledge, experience and techniques . . . and forms and methods of construction in the city of New York in the interest of public safety, health and welfare . . .”; and

WHEREAS, DOB must be able to determine that a structure meets a definition that is regulated by the Building Code in order to effectuate this purpose, so long as that determination has a rational basis; and

WHEREAS, thus, as to DOB’s contention that the Structure is a fence for purposes of the Building Code, the Board concurs; and

WHEREAS, the Board observes that it functions as a fence, in that it sets off and separates the 19 Beekman property from the 23 Beekman property; and

WHEREAS, as conceded by the appellant, it is non-load bearing, so it plainly does not function as a support for another structure; and

WHEREAS, the fact that it is made of masonry, is of a certain thickness, and looks like a wall and was referred to as such by DOB (as noted above) is not relevant; and

WHEREAS, the Board notes that Building Code § 27-509, cited above, specifically states that a fence may be made of masonry materials; and

WHEREAS, nothing in this section suggests that a masonry fence is not subject to the general six ft. height limitation; and

WHEREAS, nor does this section specify a maximum thickness for fences; and

WHEREAS, further, as indicated by the Ballentine’s

definition of “fence”, a fence may be a wall; and

WHEREAS, additionally, it is contrary to the purpose of the Building Code, set forth above, to categorize a structure as a “screen wall” or a “non-load bearing parapet wall”, when said terms are either undefined or represent a conflation of two defined terms, and, as a result, are not specifically regulated in the Code; and

WHEREAS, in other words, appellant appears to take a position that would require that DOB ignore the function of a structure, and accept a categorization that eliminates safety regulation; and

WHEREAS, the Board does not accept this position; and
WHEREAS, instead, the Board finds that DOB’s categorization of the Structure as a fence, which puts it under the Building Code for safety purposes, is: (1) reasonable given the definition of fence and the function of the Structure; and (2) in alignment with DOB’s public safety enforcement mandate; and

WHEREAS, in conclusion, the Board finds that DOB’s determination that the Structure is a fence is rational and supported by its review of a common definition of the word, as well as its assessment of the function of the Structure; and

WHEREAS, appellant’s second argument is that even if the Structure is correctly categorized as a fence, it appears that DOB has routinely approved, as a general policy, similar masonry structures at comparable heights, pursuant to its authority to do so set forth in Building Code § 27-509; and

WHEREAS, appellant alleges that DOB has no “reason or justification for the inconsistent treatment of” the Structure; and

WHEREAS, in support of the argument that DOB has a policy to approve higher fences than normally permitted by Building Code § 27-509, appellant initially submitted photos of 33 allegedly similar structures; and

WHEREAS, appellant also submitted a list of the addresses of these 33 structures; and

WHEREAS, at the outset, the Board notes that none of these structures are before it, subject to a final determination from DOB; and

WHEREAS, appellant has attempted to place the burden on DOB, and, consequently, this Board, to determine the nature of the other structures, and if and how they may have been approved; and

WHEREAS, the Board, however, finds that appellant must initially show that the other cited structures are in fact comparable to the Structure, in order to establish that their existence is evidence of a DOB policy to allow higher fences such that it can be said that 19 Beekman is being treated unfairly or inconsistently; and

WHEREAS, the Board makes this finding even though, in light of the need to process the appeal, it requested that DOB also make an attempt to discover information about the other structures that might be useful; and

WHEREAS, as set forth below, the Board is unconvinced that appellant has satisfactorily established the comparability of the Structure to these other structures; and

WHEREAS, as to the 33 structures, DOB responded that many of the photos submitted by appellant were actually of

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veneers attached to party walls, dissimilar from the Structure, which is free-standing and not attached to a party wall; DOB also suggested that some of the structures may have been illegally constructed; and

WHEREAS, appellant stated that two of the structures, at 65 East 55th Street and 425 East 52nd Street, have nothing behind them and therefore can not be veneers; appellant also cited to three others – 425 Lexington Avenue, 1166 Sixth Avenue, and 780 Third Avenue – which allegedly are too thick to be veneers; and

WHEREAS, DOB stated, and the Board agrees, that the thickness of veneers is irrelevant; veneers can be as thick as the structures as depicted in the photos, so long as they are structurally supported by the wall to which they are attached; and

WHEREAS, DOB further responded that some of the structures were distinguishable because they were part of public spaces, and thus represented part of a design scheme reviewed by the Department of City Planning (“DCP”); and

WHEREAS, the Board agrees, and notes that it has reviewed the 33 structures initially submitted by appellant and at least 14 of them are structures that are part of a public space approved by DCP as part of an integrated plan design; and

WHEREAS, specifically, the Chair of the Board, a former Deputy Director of the Department of City Planning, recognized some of the public areas in the photos, and later confirmed this recognition through review of the treatise *Privately Owned Public Spaces*, by Jerold S. Kayden, in conjunction with DCP and the Municipal Art Society, which sets forth a listing of such public areas; and

WHEREAS, the locations of the public space structures as shown in the photos are as follows: 1. 54th and Third Avenue; 2. 780 Third Avenue at 49th Street; 3. 100 UN Plaza; 4. 1114 Sixth Avenue – Grace Plaza (misidentified by appellant as 1166 Sixth Avenue); 5. 590 Madison Avenue at 57th Street; 6. 140 East 45th Street – Grand Central Tower; 7. 301 East 45th Street; 8. 747 Third Avenue; 9. 300 East 62nd Street; 10. 800 Third Avenue at 49th Street; 11. 599 Lexington Avenue; 12. 425 Lexington Avenue; 13. 415 East 54th Street; 14. 66 East 55th Street; and 15. 871 UN Plaza; and

WHEREAS, the Board also notes that the photo of the premises identified as 338 East 49th Street appears to be of the UNICEF House public space, which is actually on East 44th Street between First and Second Avenues; and

WHEREAS, thus, as DOB states, it is plausible that many of the structures were approved at heights in excess of what is normally permitted pursuant to DOB Commissioner discretion as per Building Code § 27-509; and

WHEREAS, as noted above, this Code section allows the Commissioner to permit fences higher than 15 feet “where required for the enclosure of public playgrounds, school yards, parks and similar public facilities”; and

WHEREAS, the Board observes that these public spaces are public facilities, comparable to parks; and

WHEREAS, appellant, in response to this argument, contends that at least some of the structures in public areas are

too high to merely serve enclosure purposes; and

WHEREAS, the Board observes that this contention is based on speculation that DOB would, through the discretion granted to it in Section 27-509, only allow structures to a certain height; and

WHEREAS, however, Section 27-509 does not contain a height limitation that must be applied when the Commissioner exercises discretion to allow a fence in a public space to exceed six feet in height; and

WHEREAS, further, even though, as noted above, the Board expressed concern about free-standing masonry structures not being limited in height potentially (depending on the zoning district and building type), there is a distinct difference in allowing the Commissioner of DOB to ascertain when a free-standing masonry fence may exceed six feet in height and still be safe versus allowing such structures to be built by private parties without any height regulation whatsoever as of right; in fact, requiring Commissioner approval when free-standing masonry fences exceed six feet comports with DOB’s public safety enforcement mandate, and apparently was codified for this reason; and

WHEREAS, leaving this aside, the Board notes that the Structure is not part of a DCP-approved public space, and does not represent an exercise of DOB’s discretion under Section 27-509; and

WHEREAS, thus, the apparent DOB and DCP approval of the structures associated with public spaces does not support the argument that DOB has a policy of approving structures comparable to the Structure; and

WHEREAS, the Board notes that the remaining structures out of the 33 may or may not be free-standing, veneers, or party walls; and

WHEREAS, however, appellant has not submitted any information as to these other structures aside from pictures and certificates of occupancy; and

WHEREAS, this information is of limited probative value and does not conclusively show that these structures and the Structure are similar in all respects; and

WHEREAS, accordingly, appellant’s reference to the other structures likewise does not support the allegation that DOB has a policy of allowing higher than allowed fence structures; and

WHEREAS, appellant then cited to another structure at 125/27 East 70th Street, which it alleges is similar to the Structure; and

WHEREAS, appellant states that the structure at this address is 20 ft. high and is adjacent to a party wall; and

WHEREAS, the adjacency to a party wall distinguishes this structure from the Structure, as it is possible that it is a veneer; there is no possibility that the Structure is a veneer, because it is not adjacent or attached to a party wall; and

WHEREAS, later during the hearing process, appellant cited to three other structures at the following addresses: (1) 1001 Fifth Avenue, (2) 328 East 86th Street; and (3) 225 East 85th Street; appellant submitted photos of each of these structures; and

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WHEREAS, as to 1001 Fifth Avenue, the Board notes that the photo shows a braced masonry extension of the façade of the building; and

WHEREAS, while the Board can not ascertain merely from a photo the function of this extension, it appears to be a design element rather than a line of obstacle; and

WHEREAS, the Board observes that the extension clearly faces the street; and

WHEREAS, accordingly, it is distinct from the Structure, which functions to set off a property line and which abuts an adjacent building; and

WHEREAS, as to 225 East 85th Street, the Board notes that the photos show a roof enclosed on four sides by walls, with window cutouts facing the street; and

WHEREAS, again, the walls surrounding the roof are not against an adjacent building and do not appear set off a property boundary, and thus can not be said to serve the same fencing function as the Structure; unfortunately, from the photo submitted by appellant, the Board is again unable to conclusively ascertain the function of the enclosure; and

WHEREAS, as to 328 East 86th Street, the photos show what appears to be a somewhat comparable structure to the Structure, although the Board notes that the free-standing portion of the structure appears to extend horizontally from an existing wall and appears to have been constructed as part of the wall, unlike the Structure, which is a new vertical extension built on top of an existing building; and

WHEREAS, DOB agrees, and states that all three of these structures appear to be fully integrated into the buildings, unlike the Structure; and

WHEREAS, finally, appellant cites to a recent reconsideration granted by the Borough Commissioner related to 15 William Street; and

WHEREAS, appellant states that the structure approved under the reconsideration is also comparable to the Structure; and

WHEREAS, however, the Board notes that the plans associated with this reconsideration show that it serves as a street wall for zoning compliance and is connected to the primary building section by terraces, and thus serves a structural support function; and

WHEREAS, the Board notes that it is taking no position as to the validity of the reconsideration; and

WHEREAS, in sum, of the multiple structures identified by appellant, only a few are arguably comparable to the Structure in terms of function, location between buildings, and free-standing status; and

WHEREAS, the Board notes that this does not support a conclusion that DOB has a policy to approve private masonry free-standing fences between buildings, such as the Structure, at a height greater than what the Building Code permits; and

WHEREAS, at most, appellant has put DOB on notice that there may be certain structures, whether permitted or not, that might need to be reviewed in light of concerns that they may not comply with the Building Code; since DOB was present at the hearing, the Board trusts that it will investigate

those structures of which it is concerned; and

WHEREAS, thus, the Board, based upon the representations of DOB as set forth above and upon its own analysis of the submitted evidence, rejects appellant's argument that DOB has unfairly or arbitrarily singled out the Structure for enforcement as a fence; and

WHEREAS, appellant's third argument is that the steel reinforcing apparatus installed to support the Structure after DOB discovered its instability provides sufficient structural stability such that it meets the Building Code; and

WHEREAS, however, the Board finds that a determination as to this issue has been rendered moot, since the Board concludes that the Structure is a fence and therefore can not be higher than six feet; and

WHEREAS, in sum, the Board finds that appellant's arguments are without merit, and that DOB's determination with respect to the Permit and the Structure was rational and a proper exercise of its enforcement authority.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated June 15, 2005, refusing to reinstate the Permit or cancel an emergency declaration as to the Structure, is hereby denied.

Adopted by the Board of Standards and Appeals, June 6, 2006.

294-05-A thru 296-05-A

APPLICANT – Rothkrug RothkrugWeinberg & Spector, LLP for Pleasant Place, LLC, owner.

SUBJECT – Application September 29, 2005 – Proposed construction of three two- family homes not fronting on a mapped street is contrary to GCL 36, Article 3. Current R3-2 Zoning District.

PREMISES AFFECTED – 146-34, 36, 38 Pleasant Place, Queens, West side of Pleasant Place, 100ft north of intersection with 146th Drive, Block 13351, Tentative Lot #s 100, 101, 103, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 30, 2005, acting on Department of Buildings Application Nos. 402147299, 402147271, and 402147280 which reads, in pertinent part:

“Street giving access to the proposed building is not placed on the official map of the City of New York, therefore:

- a. No certificate of Occupancy can be issued as per

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- Article 3 Section 36 of the General City Law, and
- b. Permit may not be issued since proposed construction does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space, and, therefore, is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on May 9, 2006, after due notice by publication in the *City Record*, and then to decision on June 6, 2006; and

WHEREAS, by letter dated April 5, 2006, the Fire Department states that it has reviewed the above project and has recommended that the owner sprinkler the buildings due to the limited street access; and

WHEREAS, by letter dated May 10, 2006, the owner has agreed to provide sprinklers and post “No Parking” signs along the length of Pleasant Place, and has submitted a revised site plan; and

WHEREAS, by letter dated May 30, 2006, the Fire Department has reviewed the revised site plan submitted for the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, August 30, 2005, acting on Department of Buildings Application Nos. 402147299, 402147271, and 402147280 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 16, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 6, 2006.

345-05-A

APPLICANT – Marcus Marino Architects, for Lawrence M. Garten, owner.

SUBJECT – Application December 2, 2005 – To permit construction of a 3 story, 2 family dwelling not fronting on a mapped street is contrary to Section 36 of the General City Law, Premises is located within the R3-A Growth Management Area.

PREMISES AFFECTED – 81 White Plains Avenue, 150’ south east of St. Mary’s Avenue, 50.99’ fronting on White Plains Avenue, Block 2972, Lot 35, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Marcus Marino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 1, 2005, acting on Department of Buildings Application No. 500810919 which reads, in pertinent part:

- “1. GCL §36 – Municipal improvements in streets, buildings not fronting on mapped streets: The lot is not fronting and the building permit and Certificate of Occupancy can’t be issued unless special conditions are met, including approval from the Board of Standards and Appeals (BSA).
2. BC §27-291 – Frontage: Every Building, exclusive of accessory buildings, shall have at least eight percent of the total perimeter of the building fronting directly upon a street or frontage space.

Frontage Space – A *street*; or an open space outside of a *building*, not less than thirty feet in any dimension, that is accessible from a *street* by a driveway, lane alley, or alley at least twenty feet in width, and that is permanently maintained free of all obstructions that might interfere with its use by the Fire Department.”; and

WHEREAS, a public hearing was held on this application on June 6, 2006, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated February 9, 2006, the Fire Department states that it has reviewed the above project and has recommended the owner sprinkler the building and provide street signs throughout the development to read: “No Parking - Fire Lane”; and

WHEREAS, by in response to the Fire Department’s request the owner has agreed to fully sprinkler the building and submitted a revised site plan; and

WHEREAS, by letter dated, April 27, 2006, the Fire Department has reviewed the revised site plan submitted for the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated December 1, 2005, acting on Department of Buildings Application No. 500810919, is modified by the power vested in the Board by Section 36 of the

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General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received March 9, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 6, 2006.

134-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Gaspare Colomone, owner.

SUBJECT – Application May 31, 2005 – Proposed construction of a three dwellings, which lies in the bed of a mapped street (67th Street) which is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 53-31 67th Street, 53-33 67th Street, and 67-02 53rd Road, Block 2403, Lot 117, 217, 17, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for continued hearing.

263-03-A

APPLICANT – John W. Carroll, Wolfson & Carroll, for Ben Bobker, owner.

SUBJECT – Application August 20, 2003 – An administrative appeal challenging the Department of Buildings' final determination dated August 13, 2003, in which the Department refused to revoke the certificate of occupancy, on the basis that the applicant had satisfied all objections regarding said premises.

PREMISES AFFECTED – 1638 Eighth Avenue, west side, 110-5' east of Prospect Avenue, Block 1112, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: John Carroll.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for continued hearing.

173-05-A

APPLICANT – Stuart Klein for Trevor Fray, owner.

SUBJECT – Application July 28, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 85-24 168th Place, west side of 168th Place, 200 feet south of the corner formed by the intersection of 18th Place and Gothic Drive. Block 9851, Lot 47, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Stuart Klein.

For Opposition: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for decision, hearing closed.

299-05-A

APPLICANT – Sheldon Lobel, P.C., for Henry Cheung, owner.

SUBJECT – Application October 4, 2005 – Proposal to build one, two story, one family home which lies in the bed of a mapped street (Getz Avenue), which is contrary to Section 35 of the General City Law, Borough of Queens.

PREMISES AFFECTED – 369 Wilson Avenue, north side of Wilson Avenue between Eltingville Boulevard and Ridgewood, Block 5507, Lot 13, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Zara Fernandes.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for continued hearing.

317-05-A

APPLICANT – Kevin Shea, applicant; Woodcutters Realty Corp. Owner; Three on Third LLC, lessee.

SUBJECT – Application November 1, 2005 – Appeal challenging DOB's interpretation of various provisions of the Zoning Resolution relating to the construction of a 16 story mixed use building in an C6-1/R7-2 Zoning district, which violates Zoning Floor Area exclusions, height and setback, open space and use regulations.

PREMISES AFFECTED – 4 East 3rd Street, South east corner of East Third and the Bowery, Block 458, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Kevin Shea.

For Opposition: Irving Gotbaum.

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For Administration: Janine Gaylard, Department of Buildings.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

353-05-BZY

APPLICANT – Cozen & O'Connor for Emet Veshlom Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Peter Geis.

For Opposition: Michael J. Schweinsburg of Office of Councilwoman Gonzalez, John Keefe, Assembly Member Brennan's Office, Aaron Brashear, Russell Wylig, Monica Staleia and Bo Samajopoulos.

For Administration: Janine Gaylard, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

355-05-BZY

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue, Block 869, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Aaron Brashear.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for continued hearing.

364-05-A & 365-05-A

APPLICANT – Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 87-30 and 87-32 167th Street, 252' north of the corner formed by the intersection of Hillside Avenue and 167th Street, Block 9838, Lots 114 and 116, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for adjourned hearing.

8-06-A & 9-06-A

APPLICANT – Victor K. Han, for Kim Dong Ouk, owner.

SUBJECT – Application January 11, 2006 – Proposed construction of a two family semi- detached dwelling located within the bed of a mapped street which is contrary to Section 35 of the General City Law, Block 5380, Lot 49, Borough of Queens.

PREMISES AFFECTED –

42-32 149th Place, West side of 149th Place, 255' N/W of Beech Avenue, Block 5380, Lot 49, Borough of Queens.

42-34 149th Place, West side of 149th Place, 255' N/W of Beech Avenue, Block 5380, Lot 50, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Victor Han.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING TUESDAY AFTERNOON, JUNE 6, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

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ZONING CALENDAR

274-04-BZ

APPLICANT – Harold Weinberg, P.E., for Dr. Elena Starosta, owner.

SUBJECT – Application August 6, 2004 – under Z.R. §72-21 Variance under Section 72-21, in an R4 district and on a lot consists of 2,470 SF, permission sought to legalize the extension of a medical use to the second floor on an existing building consisting of two-stories. The use is contrary to side yard requirements.

PREMISES AFFECTED – 2114 Gravesend Neck Road, south side, 63'-7½" south of East 22nd Street, Block 7381, Lot 101, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

Adopted by the Board of Standards and Appeals, June 6, 2006.

323-05-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for DB Real Estate Enterprises, LLC, owner.

SUBJECT – Application November 9, 2005 – Under Z.R. §72-21 to allow a proposed two-family dwelling that does not provide a required side yard in an R5 Zoning District; contrary to Z.R. §23-461(b).

PREMISES AFFECTED – 488 Logan Street, West side of Logan Street, 190ft south of intersection with Pitkin Avenue, Block 4227, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 12, 2005, acting on Department of Buildings Application No. 301932942, reads, in pertinent part:

“ZR 23-461(b), requires one 8’-0” side yard for two-family semi-detached residences, this lot is only 20’-0” wide and in existence prior to 1961.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a 1.20 Floor Area Ratio (FAR), two-family, two-story plus basement home that does not provide the required side yard, contrary to ZR § 23-461; and

WHEREAS, an initial DOB objection cited to ZR § 25-621(a)(1), which provides that parking be permitted only in the side lot ribbon or in any area on the zoning lot that is not between the street line and the street wall; and

WHEREAS, on October 25, 2005, the Brooklyn Borough Commissioner accepted a parking configuration that permits the location of one parking space between the street wall and the street line if the other required parking space is located inside the building; and

WHEREAS, the applicant subsequently revised the proposal to reflect this parking configuration; and

WHEREAS, a public hearing was held on this application on March 28, 2006 after due notice by publication in *The City Record*, with a continued hearing on April 25, 2006, and then to decision on June 6, 2006; and

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins; and

WHEREAS, the site is located on the west side of Logan Street, 190 ft. south of Pitkin Avenue; and

WHEREAS, the site is 20 ft. in width and 100 ft. in depth, with a total lot area of 2,000 sq. ft.; and

WHEREAS, the applicant represents that available records indicate that the lot was not in common ownership with either of the two contiguous lots on December 15, 1961; and

WHEREAS, the site is currently vacant and has been so since at least 1929, as evidenced by the 1929 Belcher Hyde Atlas excerpt submitted by the applicant; and

WHEREAS, the applicant proposes to construct a two-story, two-family home, with one parking space located in a basement garage and another located in the area between the street line and the street wall; and

WHEREAS, the proposed home will be 17 ft. in width and will range from 45.33 and 50.33 ft. in depth; thus, it will have a total residential floor area of 2,392 sq. ft. (3,300 sq. ft. is the maximum permitted); a total residential FAR of 1.20 (1.25 is the maximum permitted); an OSR of 59.5 percent (45 percent is the minimum required); one side yard of three feet (a side yard of five feet is required); and a 35.67 ft. rear yard (a 30 ft. rear yard is the minimum required); two off-street parking space will also be provided; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is a pre-existing 20 ft. wide and 100 ft. deep lot that can not accommodate a habitable as of right residential development; and

WHEREAS, as to uniqueness, the applicant has submitted a 400 foot radius diagram that illustrates that the subject premises is one of approximately three vacant lots in the area, and appears to be the only undeveloped site located adjacent to an existing multiple dwelling; and

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WHEREAS, the applicant represents that the requested side yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, the Board observes that if the applicant were to provide the required five ft. side yard, the result would be a home of approximately 15 feet in width, which the applicant contends is not marketable; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant has submitted a radius diagram and photographs that show that many of the buildings in the surrounding area are attached dwellings without side yards; and

WHEREAS, the applicant also notes that although a maximum height of 40 feet is permitted, the height of the proposed building is 26 feet, which is consistent with the height of neighbors on either side, and with the height of other buildings on the subject block; and

WHEREAS, the Board notes that a dwelling with one lot line wall and one side yard of three feet would not negatively impact the adjacent uses, as the property to the north is occupied by a multiple dwelling with a 4'-6" side yard and the property to the south does not have any lot line windows; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a two-family, two-story plus basement home that does not provide the required side yard, contrary to ZR § 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 16, 2006"—eight (8) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as

follows: an FAR of 1.20; a floor area of 2,392 sq. ft.; an OSR of 59.5 percent; a rear yard of 30 ft.; a side yard of three feet; one parking space in an internal garage and one parking space between the street line and the street wall;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 6, 2006.

290-02-BZ thru 314-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner. (Tapei Court)

SUBJECT – Application October 24, 2002 – under Z.R. §72-21 – to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district's equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners' association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-01/03/05/07/09/11/13/17/19/15/21/21/23/25/27/29/31/33/35/20/22/24/26/28/30/32/34 Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for adjourned hearing.

374-03-BZ thru 376-03-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner.

SUBJECT – Application December 2, 2003 – under Z.R. §72-21 – to permit the construction of 28 attached, three-

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story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district's equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners' association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-17/19/36-A Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for adjourned hearing.

249-04-BZ

APPLICANT – Harold Weinberg, P.E. for Prince Parkside LLP, owner.

SUBJECT – Application July 13, 2004 – Zoning Variance (bulk) pursuant to Z.R. §72-21 to allow an enlargement of an existing non-complying UG 2 residential building in an R7-1 district; contrary to Z.R. §§ 23-121, 54-31, 23-462, 25-241, 23-22.

PREMISES AFFECTED – 205 Parkside Avenue, Brooklyn; located between Ocean Avenue and Parkside Court (Block 5026, Lot 302), Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for adjourned decision.

14-05-BZ

APPLICANT – The Law Office of Fred Becker, Esq. for Resorts 56 Inc. dba as Spa Ja, lessee; 8th and 56th Street Associates, owner.

SUBJECT – Application January 26, 2005 – under Z.R. §73-36 to allow a physical Culture establishment on second and third floor of a three story commercial building. Premises is located within the C6-4 (CL) zoning district.

PREMISES AFFECTED – 300 West 56th Street, southwest corner of West 56th and 8th Avenue, Block 1046, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Fredrick A. Becker and James Coleman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for decision, hearing closed.

89-05-BZ

APPLICANT – Stadtmauer Bailkin, LLP (Steven M. Sinacori, Esq.) for 18 Heyward Realty, Inc., owner.

SUBJECT – Application April 12, 2005 – under Z.R. §72-21 to allow an enlargement of the rear portion of an existing five-story community facility/commercial building; site is located in an R6 district; contrary to Z.R. §24-11, §24-37 and §24-33.

PREMISES AFFECTED – 18 Heyward Street, Heyward Street, between Bedford and Wythe Avenues, Block 2230, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Steven Sinacori.

For Opposition: Christian Hylia.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for decision, hearing closed.

100-05-BZ

APPLICANT – Martyn & Don Weston, for 223 Water Street, LLC, owner.

SUBJECT – Application April 25, 2005 – under Z.R. §72-21 to permit the proposed conversion of the second and third floors, of a six story manufacturing building, to residential use, Use Group 2, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 223 Water Street, a/k/a 48 Bridge Street, northwest corner, Block 31, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston and Jack Freeman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for decision, hearing closed.

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119-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sam Malamud, owner.

SUBJECT – Application May 16, 2005 – under Z.R. §72-21 to permit the proposed enlargement to an existing one and two story warehouse building, with an accessory office, Use Group 16, located in a C4-3 and R6 zoning district, which does not comply with the zoning requirements for floor area, floor area ratio, perimeter wall height, parking and loading berths, is contrary to Z.R. §52-41, §33-122, §33-432, §36-21 and §36-62.

PREMISES AFFECTED – 834 Sterling Place, south side, 80' west of Nostrand Avenue, Block 1247, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for adjourned hearing.

132-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sami Alboukai, owner.

SUBJECT – Application May 26, 2005 – Under Z.R. §73-622 to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per Z.R. §23-141, a rear yard less than the minimum per Z.R. §23-47 and a perimeter wall height greater than the maximum per Z.R. §23-31. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 220 West End Avenue, west side of West End Avenue between Oriental Boulevard and Esplanade, Block 8724, Lot 158, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Susan Klopper and Judith Bar.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for decision, hearing closed.

199-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Stefano Troia, owner.

SUBJECT – Application August 23, 2005 – under Z.R. §72-21 to allow a proposed twelve (12) story residential building with ground floor retail containing eleven (11) dwelling units in an M1-6 Zoning District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 99 Seventh Avenue, located on the southeast corner of 7th Avenue and West 27th Street (Block 802, Lot 77), Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Joseph Morsellino, A. Morali and Robert Pauls.

For Opposition: Jack Lester.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for continued hearing.

297-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Vestry Acquisition, LLC, owner.

SUBJECT – Application September 30, 2005 – Zoning Variance (use) pursuant to Z.R. §72-21 to allow a proposed nine (9) story residential building containing seven (7) dwelling units and eight (8) accessory parking spaces located in an M1-5 district (Area B2) of the Special Tribeca Mixed Use District; contrary to Z.R. §42-00, §111-104(b) and §13-12.

PREMISES AFFECTED – 33 Vestry Street, located on the southerly side of Vestry Street, 100' west of Hudson Street, Block 219, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker and Winica Dubbeldam.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for decision, hearing closed.

303-05-BZ

APPLICANT – Eric Palatnik, P.C., for Adoo East 102 Street Corp., owner; Aspen Fitness, lessee.

SUBJECT – Application October 12, 2005 – under Z.R. §72-21 to permit the legalization of the second floor of an existing two story commercial structure for use as a physical culture establishment. Premises is located within the R8-B zoning district.

PREMISES AFFECTED – 428 East 75th Street, between York and First Avenues, Block 1469, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik and Robert Pauls.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for continued hearing.

313-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Douglas Brenner and Ian Kinniburgh, owners.

SUBJECT – Application October 20, 2005 – under Z.R. §72-

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21 to allow a proposed enlargement of an existing residential building located in C6-1 and R7-2 districts to violate applicable rear yard regulations; contrary to Section 23-47. PREMISES AFFECTED – 26 East 2nd Street, Block 458, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Richard Lobel, I.C. Kinniburgh and D. Brenner.

For Opposition: Stuart Beckerman and other.

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for continued hearing.

314-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Mouhadeb, owner.

SUBJECT – Application October 25, 2005 – Special Permit Z.R. §73-622 for an enlargement to a single family residence which proposed an increase in the degree of non-compliance with respect to floor area ratio and open space/lot coverage as per Z.R. §23-141b, less than the total required side yards as per Z.R. §23-361a and a rear yard less than the required rear yard as per Z.R. §23-47. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 1670 East 23rd Street, East 23rd Street between Avenue P and Quentin Road, Block 6785, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for decision, hearing closed.

349-05-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Church of the Resurrection, owner.

SUBJECT – Application December 8, 2005 – Zoning Variance (bulk) pursuant to Z.R. §72-21 – to allow a proposed eight (8) story residential building with community facility use on the 1st and 2nd floors in an R7A Zoning District; contrary to Z.R. §23-145.

PREMISES AFFECTED – 325 East 101st Street, between First and Second Avenues, Block 1673, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for decision, hearing closed.

22-06-BZ

APPLICANT – Harold Weinberg, P.E., for Margret Riordan, owner.

SUBJECT – Application February 9, 2006 – under Z.R. §72-21 to permit the enlargement of an existing single family dwelling on a pre-existing undersized lot. The proposed enlargement increases the degree of non-compliance at the front yard, rear yard and side yards; (Z.R. §23-45, §23-47 and §23-48) the proposed enlargement also exceeds the allowable setback and is contrary to Z.R. §23-631. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 8 Gotham Avenue, between Fane Court, south side and Shell Bank Creek, Block 8883, Lot 978, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

**SPECIAL HEARING
WEDNESDAY MORNING, JUNE 7, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

174-05-A

APPLICANT – Norman Siegel on behalf of Neighbors
Against N.O.I.S.E., GVA Williams for (Hudson Telegraph
Associates, LP) owner; Multiple lessees.

SUBJECT – Application July 29, 2005 – Neighbors against
N.O.I.S.E. is appealing the New York City Department of
Buildings approval of a conditional variance of the New York
City Administrative Code §27-829(b)(1) requirements for
fuel oil storage at 60 Hudson Street.

PREMISES AFFECTED – 60 Hudson Street, between Worth
and Thomas Streets, Block 144, Lot 40, Borough of
Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Norman Siegel, Doris Diether, Tim Lannan,
Luis E. Reyes, Council Member Alan J. Gerson, Madelyn
Wils, Alyssa Ziegel, on behalf of Assemblymember Deborah
J. Glick; Charles Komanoff, Matt Viggliario, on behalf of
NYS Senator Connors, Bruce Ehrmann, Todd Stone, Deborah
Allen, Leo Debobes, Paul Goldstein, Brian Lok and Aziz
Dehkan.

For Opposition: Phyllis Arnold, Chief Patrick McNally,
Julian Bazel, Fire Department Counsel and James Farley.

For Administration: Phyllis Arnold, Department of Buildings.

ACTION OF THE BOARD – Laid over to
September 13, 2006, at 1:30 P.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

BULLETIN

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Volume 91, No. 25

June 22, 2006

DIRECTORY

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Tuesday, June 13, 2006**

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1888-61-BZ 93-10 23rd Avenue, Queens
224-66-BZ 325-335 East 49th Street, Manhattan
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269-98-BZ 70 East 184th Street, Bronx
182-04-BZ 351/53 West 14th Street, Manhattan
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DOCKETS

New Case Filed Up to June 13, 2006

115-06-BZ

1820 East 28th Street, West side, 140'-0" south of Avenue R between Avenues R and S, Block 6833, Lot 13, Borough of **Brooklyn, Community Board: 15**. SPECIAL PERMIT-73-622-Proposed to enlarge the second story over the first and enlarge into the rear yard.

116-06-BZ

172 Norfolk Street, West side, 200'-0" North of Oriental Boulevard, between Oriental and Shore Boulevards, Block 8756, Lot 26, Borough of **Brooklyn, Community Board: 15**. SPECIAL PERMIT-73-622-Proposed to enlarge the second story over the first and enlarge into the rear yard.

117-06-A

1373 East 13th Street, Between Avenue N and Elm Avenue, Block 6742, Lot 58, Borough of **Brooklyn, Community Board: 14**. Appeals-To rescind a Stop Work Order by DOB and re-instate permit on the grounds that the owners have acquired a common law vested right to complete construction and to obtain a Certificate of Occupancy.

118-06-BZ

71 Beaumont Street, East side, 220'-0" north of Hampton avenue between Hampton Avenue and Shore Boulevard., Block 8728, Lot 77, Borough of **Brooklyn, Community Board: 15**. SPECIAL PERMIT-73-622-Proposed to enlarge the second story over the first and enlarge forward in the front without encroaching on a front yard.

119-06-BZ

444 Avenue W, South side, 70'-0" east of East 4th Street, between Avenues R and S., Block 7180, Lot 4, Borough of **Brooklyn, Community Board: 15**. SPECIAL PERMIT-73-622-Proposed to enlarge the second story over the first and enlarge into the rear space (not a required rear yard).

120-06-A

1427 East 17th Street, Between Avenue N and Avenue O., Block 6755, Lot 91, Borough of **Brooklyn, Community Board: 14**. Appeal-Rescind a Stop Work Order issued by DOB and re-instate DOB Permit #302058840-01 on the grounds that the owner have acquired a common law vested right to complete construction and obtain a Certificate of Occupancy.

121-06-BZ

495 East 180th Street, Northwest corner of the intersection formed between 180th Street and Bathgate Avenue., Block 3047, Lot 21, Borough of **Bronx, Community Board: .** SPECIAL PERMIT-11-411 & 11-412-To permit the operation of an automotive service station.

122-06-BZ

2671 86th Street, West 12th Street and West 11th Street, Block 7115, Lot 27, Borough of **Brooklyn, Community Board: 15**. Under 72-21-Proposed enlargement of medical office building, and construction of residences without required front yard and side yard.

123-06-BZ

21 Cheshire Place, Northside 905.04' to Victory Boulevard, Block 240, Lot 77, Borough of **Staten Island, Community Board: 1**. Under 72-21-to legalize the existing one (1) room, one (1) story addition which encroaches upon the required rear yard.

124-06-BZ

1078 East 26th Street, East 26th Street between Avenue J and Avenue K, Block 7607, Lot 83, Borough of **Brooklyn, Community Board: 14**. SPECIAL PERMIT-73-622-To allow the enlargement of a single family residence.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JULY 25, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 25, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

106-76-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Amerada Hess Corp., owner.
SUBJECT – Application May 2, 2006 - Pursuant to ZR 72-01 to reopen and amend the BSA resolution to construct a new one story accessory convenience store, replace the existing metal canopy, pumps and pump islands and to remove two curb cuts and replace with one curb cut. The premise is located in an R3-2 zoning district.
PREMISES AFFECTED – 129-15 North Conduit Avenue, northeast corner of 129th Street, Block 11863, Lot 12, Borough of Queens.
COMMUNITY BOARD #10Q

998-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Ldk Realty Inc., owner.
SUBJECT – Application April 10, 2006 – Reopening for an extension of term of variance permitting accessory parking to a eating and drinking establishment (UG-6) in an R3-2 zoning district, contrary to section 22-10 of the zoning resolution. The current term expired on April 10, 2004. Staten Island Community Board 2.
PREMISES AFFECTED – 2940/4 Victory Boulevard, south side of Victory Boulevard, 25.47' west of Saybrook Street, Block 2072, Lots 57, 65, Borough of Staten Island.
COMMUNITY BOARD #2SI

291-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Torah Academy High School, owner.
SUBJECT – Application May 9, 2006 - Extension of Time to complete construction of a Special Permit, Use Group 3 for a yeshiva (Torah Academy High School) which expired on April 9, 2006. The premise is located in an C8-2 zoning district.
PREMISES AFFECTED – 2316-2324 Coney Island Avenue, Block 7112, Lots 9, 10, Borough of Brooklyn.
COMMUNITY BOARD #15BK

189-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Bill Wolf Petroleum Corp., owner.
SUBJECT – Application June 14, 2006 - Extension of Time/Waiver to complete construction and obtain a Certificate of Occupancy for an automotive service station with an accessory convenience store which expired on October 21, 2005. The premise is located in a C2-2/R-5 zoning district.
PREMISES AFFECTED – 836 East 233rd Street, southeast corner of 233rd Street and Bussing Avenue, block 4857, Lots 44, 41, Borough of The Bronx.
COMMUNITY BOARD #12BX

362-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Reiss Realty Corporation, owner.
SUBJECT – Application June 1, 2006 - Extension of Time to obtain a Certificate of Occupancy for an accessory parking lot to a commercial use group which expired on May 11, 2006. The premise is located in an R8 zoning district.
PREMISES AFFECTED – 428 West 45th Street, south side of West 45th Street, between 9th and 10th Avenues, Block 1054, Lot 48, Borough of Manhattan.
COMMUNITY BOARD #4M

APPEALS CALENDAR

63-06-A

APPLICANT – Sheldon Lobel, P.C.,
OWNERS: Kevin and Alix O'Mara
SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.
PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #8M

81-06-A

APPLICANT – Whitney Schmidt, Esq.
OWNERS: Kevin and Alix O'Mara
SUBJECT – Application May 2, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building code regarding required setbacks and building frontage.
PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #8M

CALENDAR

JULY 25, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 25, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

364-04-BZ

APPLICANT – Sheldon Lobel, P.C., for New Lots Avenue, LLC, owner.

SUBJECT – Application November 18, 2004 – pursuant to Z.R. §72-21 to permit the proposed construction of a one-story commercial building, for use as three retail stores, Use Group 6, located within a residential district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 690/702 New Lots Avenue, south side, between Jerome and Warwick Streets, Block 4310, Lots 5, 7, 8 and 10, Borough of Brooklyn.

COMMUNITY BOARD #5BK

298-05-BZ

APPLICANT – Rampulla Associates Architects, for Pasquale Pappalardo, owner.

SUBJECT – Application October 4, 2005 – Variance pursuant to Z.R. Section 72-21 to construct a new two-story office building (Use Group 6) with accessory parking for 39 cars. The premises is located in an R3X zoning district. The site is currently vacant and contains an abandoned greenhouse building from when the site was used as a garden center. The proposal is contrary to the district use regulations pursuant to Z.R. Section 22-00.

PREMISES AFFECTED – 1390 Richmond Avenue, bound by Richmond Avenue, Lamberts Lane and Globe Avenue, Block 1612, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #2SI

10-06-BZ

APPLICANT – Harold Weinberg, for David Cohen, owner.

SUBJECT – Application January 12, 2006 – Pursuant to ZR 73-622 Special Permit for the enlargement of a single family residence which increase the degree of non-compliance for lot coverage and side yards (23-141 & 23-48), exceeds the maximum permitted floor area (23-141) and proposes less than the minimum rear yard (23-47). The premise is located in an R4 zoning district.

PREMISES AFFECTED – 2251 East 12th Street, east side 410' south of Avenue V between Avenue V and Gravesend Neck Road, Block 7372, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #15BK

55-06-BZ

APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.

SUBJECT – Application March 24, 2006 – Zoning variance pursuant to ZR Section 72-21 to allow a proposed office building in an R3-2/C1-1 (NA-1) district to violate applicable rear yard regulations; contrary to ZR sections 33-26 and 33-23. Special Permit is also proposed pursuant to ZR Section 73-44 to allow reduction in required accessory parking spaces.

PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot (Tentative 92, 93, 94), Borough of Staten Island.

COMMUNITY BOARD #2SI

127-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Kaufman Center, owner.

SUBJECT – Application June 16, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to enlarge an existing community facility building. Proposal is non-compliant regarding floor area ratio (FAR) and rear yard. The site is located within a C4-7(L) zoning district; contrary to Z.R. 33-123 and 33-26.

PREMISES AFFECTED – 129 West 67th Street, north side of 67th Street, between Broadway and Amsterdam Avenue, Block 1139, Lots 1, 8, 57, 107, Borough of Manhattan.

COMMUNITY BOARD #7M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 13, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, March 28, 2006 as printed in the bulletin of April 6, 2006, Volume 91, Nos. 13 & 14. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

364-04-BZ

APPLICANT – Sheldon Lobel, for New Lots Avenue, LLC, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 690-702 New Lots Avenue, south side of New Lots Avenue between Jerome Street and Warwick Street, Block 4310, Lots 5, 7, 8 &10, Borough of Brooklyn

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

Adopted by the Board of Standards and Appeals, June 13, 2006.

413-50-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT –Application October 12, 2005 - pursuant to ZR 11-411 & 11-412 for an Extension of Term of a Gasoline Service Station-UG 16 (BP North America) for ten years which expired on November 18, 2005. This instant application is also for an Amendment to legalize modifications to the previously approved signage on site.

PREMISES AFFECTED – 691/703 East 149th Street, northwest corner of Jackson Avenue, Block 2623, Lot 140, Borough of The Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

1888-61-BZ

APPLICANT – Alfonso Duarte, for Ali Amanolahi, owner.
SUBJECT – Application June 21, 2005 – Pursuant to Z.R. §11-412 for an Amendment to an eating and drinking establishment and catering hall for the further increase in floor area and the to legalize the existing increase in floor area, the separate entrance to the catering hall and the drive thru at the front entrance. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 93-10 23rd Avenue, southwest corner of 94th Street, Block 1087, Lot 1, Elmhurst, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for continued hearing.

224-66-BZ

APPLICANT – Peter Hirshman, for Building Management Co., owner.

SUBJECT – September 23, 2005 - Extension of Term & Waiver for the re-establishment of transient parking use within the existing garage of a multiple dwelling which expired on June 14, 2001. The proposed term of this filing is for ten (10) years. The premise is located in an R8B zoning district.

PREMISES AFFECTED – 325-335 East 49th Street, aka 328-334 50th Street, northside of East 49th Street, 262’-4” west of First Avenue, Block 1342, Lots 12,13,15,39-41, 111, 139, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant:

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

71-93-BZ

APPLICANT – Paul F. Bonfilio, for Vincenzo Farruggio, owner.

SUBJECT – Application May 11, 2006 - Amendment to a previously granted Variance ZR72-21 to construct an additional single family residence on one zoning lot that has been sub-divided into two tax lots. The proposed application does not have the required 15' front yard and is contrary to ZR 23-45.

PREMISES AFFECTED – 153-11 Bayside Avenue, 193’ west of 154th Street, Block 4835, Lot 27, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant:

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

MINUTES

Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for decision, hearing closed.

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application April 12, 2006 -pursuant to ZR 72-01 for the Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for the construction of a two story building for commercial use (Retail UG6) in a residential use district.

PREMISES AFFECTED – 70 East 184th Street, aka 2363 Morris Avenue, south side of East 184th Street, corner formed by the intersection of Morris Avenue, Block 3183, Lot 42, Borough of The Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Date to determined at a later date at the applicant’s request.

182-04-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Chelsea Village Associates, owner; Harmic III, LLC, lessee.

SUBJECT – Application January 17, 2006 – Reopening for an amendment permit proposed eating and drinking establishment (comedy theater), Use Group 12, on a zoning lot, split between a C6-2A and R8B zoning district, of which a portion is located in the R8B district, is contrary to Z.R. §22-10.

PREMISES AFFECTED – 351/53 West 14th Street, north side, between Eighth and Ninth Avenues, Block 738, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

222-04-A thru 224-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, & Spector,

LLC for Dalip Karpuzi, owner.

SUBJECT – Application June 1, 2004 – to permit construction of a three one family dwellings in the bed of a final mapped street (Pemberton Avenue) contrary to Article 3, Section 35 of the General City Law. Premises is located within an R3-1 (SRD) Zoning District.

PREMISES AFFECTED – 486 Arthur Kill Road, and 120, 122 Pemberton Avenue, Block 5450, Lots 37, 35 and 36, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

370-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg & Spector, LLC for Edgewater Developers and Builders. Inc., Owner.

SUBJECT – Application November 23, 2004 – to permit construction of a one family dwelling in the bed of a final mapped street (Egdewater Road) contrary to Article 3, Section 35 of the General City Law. Premises is located within an R2 Zoning District.

PREMISES AFFECTED – 1511 Egmont Place, north side of Egmont Place 705.9 ft east of Mott Avenue, Block 15685, Lot 48, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

153-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for MSP Development, owner.

SUBJECT – Application filed on June 28, 2005 – Proposed construction of a two family homes, which lies in the bed of a mapped street (141st Avenue) which is contrary to Section 35 of the General City Law. Premises is located in R3-2 zoning district.

PREMISES AFFECTED – 222-50 and 222-54 141st Avenue, Block 13149, Lot 148, 48, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

MINUTES

TUESDAY AFTERNOON, JUNE 13, 2006
1:30 P.M.

354-05-BZY

APPLICANT – Cozen & O'Connor for Global Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a 62 unit 11 story multiple dwelling under the prior Zoning R6. New Zoning District is R6B/ C2-3 as of November 16, 2005.

PREMISES AFFECTED – 182 15th Street, Brooklyn, south side of 15th Street, 320 feet west of 5th Avenue, Block 1047, Lot 22 Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

For Opposition: Michael J. Schweinsburg of Office of Councilwoman Gonzalez, Hannibal Galin, Jane Cypher, Bo Samjopoulos, Joe Levine, and Jay Zeid.

For Administration: Janine Garland, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 25, 2006, at 10 A.M., for continued hearing.

372-05-BZY & 373-05-BZY

APPLICANT – Adam Rothkrug, for Woodrow Estates North LLC, owner.

SUBJECT – Application December 27, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. §11-332. Prior R4 Zoning District. Current R3-A (HS) Zoning District.

PREMISES AFFECTED – 28 Webster Avenue (aka 101 Stanley Avenue) Block 111, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 1:00 P.M.

REGULAR MEETING

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

66-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum Inc., owner.

SUBJECT – Application March 16, 2005 – Special Permit filed Under Z.R. §§11-411 and 11-413 of the zoning resolution to request the reinstatement of an expired, pre-1961, variance, and to request authorization to legalize the change of use from a gasoline service station with accessory automotive repairs, to an automotive repair facility without the sale of gasoline, located in a C2-4/R7-1 zoning district. PREMISES AFFECTED – 1236 Prospect Avenue, southeast corner of Prospect Avenue and Home Street, Block 2693, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated February 24, 2005 acting on Department of Buildings Application No. 200929193, reads, in pertinent part:

“Continued use . . . of the automotive service station is contrary to Board of Standards and Appeals resolution 176-35-BZ, Vol. III, and is not permitted as-of-right in an R7-1/C2-4 zoning district.”; and

WHEREAS, this is an application for a reinstatement of a prior Board approval and an extension of term, pursuant to ZR § 11-411, and a legalization of a change in use from a gasoline service station with accessory automotive repairs (UG 16), to an automotive repair facility without the sale of gasoline (UG 16), pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on March 7, 2006, after due notice by publication in the *City Record*, with continued hearings on April 11, 2006 and May 16, 2006, and then to decision on June 13, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the premises is located on the southeast corner of Prospect Avenue and Home Street in a C2-4 (R7-1) zoning district; and

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WHEREAS, the subject zoning lot is trapezoid-shaped and has a total lot area of approximately 8,740 sq. ft.; and

WHEREAS, the site is currently occupied by a 2,061 sq. ft. automotive repair facility, with accessory parking for vehicles awaiting service; and

WHEREAS, the Board originally granted a variance to permit the erection and maintenance of a gasoline service station on October 15, 1935 under BSA Cal. No. 176-35-BZ; and

WHEREAS, subsequently, the variance was re-established, amended, and extended by the Board at various times, most recently on January 4, 1983, when the Board permitted an extension of term for a gasoline service station with accessory uses for a term of ten years, expiring on July 24, 1991; and

WHEREAS, the applicant represents that the premises is improved upon with an existing automotive repair facility without the sale of gasoline (UG 16); and

WHEREAS, the applicant represents further that there has been no enlargement to the zoning lot or the building, and the only changes to the site from the time of the last grant are the removal of the gasoline pumps, the conversion of the auto wash bay to a fourth service bay, the addition of parking for vehicles awaiting service, and the installation of an enclosed fence for vehicles awaiting service; a UG 16 use has been in occupancy at the site on a continuous basis since the expiration noted above; and

WHEREAS, the applicant now proposes to reinstate the prior grant, legalize the existing use, and obtain a new ten-year term; and

WHEREAS, at hearing, the Board asked the applicant to remove the two storage sheds present at the southeast corner of the site since they were not part of the previous grants; and

WHEREAS, the applicant submitted a revised site plan indicating that the storage sheds would be removed; and

WHEREAS, additionally, the Board reviewed the position of the curb cuts and identified traffic circulation and safety concerns; and

WHEREAS, the Board asked the applicant to relocate the curb cut on Prospect Avenue, south of the intersection with Home Street, away from the intersection in order to provide better circulation and a safer condition; and

WHEREAS, the Board asked the applicant to remove the second curb cut on Prospect Avenue, to the east of the one at the intersection; and

WHEREAS, the applicant submitted a revised site plan that shows the first Prospect Avenue curb cut moved to the east, away from the intersection, and the second one removed; and

WHEREAS, during the site visit, the Board observed non-complying signage and asked the applicant to have it removed; and

WHEREAS, the Board also asked the applicant for evidence that the site was maintained free of graffiti; and

WHEREAS, the applicant submitted photographs of the site demonstrating the sign removal and a letter from the operator detailing his efforts to keep the building free of graffiti; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use from one non-conforming use to another non-conforming use in the same use group; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-411 and 11-413, for a reinstatement of a prior Board approval, an extension of term, and a legalization of a change in use from a gasoline service station with accessory automotive repairs (UG 16), to an automotive repair facility without the sale of gasoline (UG 16); *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received March 16, 2006"-(2) sheets and "May 30, 2006"-(2) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on June 13, 2016;

THAT the hours of operation shall be from 8 A.M. to 7 P.M., Monday through Saturday;

THAT no gas pumps shall be installed on the site;

THAT the lot shall be kept free of dirt and debris;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the layout of the property, location and size of the fence shall be as approved by the Department of Buildings;

THAT all signage shall comply with C1-1 zoning regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 13, 2006.

108-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – Under Z.R. §72-21

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to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #74, the companion case, 109-05-BZ is Tax Lot #76 on the same zoning lot.

PREMISES AFFECTED – 224-22 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 13, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug

For Opposition: Judith Charrington.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 2, 2006, acting on Department of Buildings Application No. 402039511, reads:

“Proposed one family dwelling without a required rear yard is contrary to Section 23-47 ZR and must be referred to the Board of Standards and Appeals
Proposed one family dwelling without a required front yard is contrary to Section 23-45 ZR and must be referred to the Board of Standards and Appeals”;
and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district, the proposed construction of a two-story, single-family residence, which does not comply with the zoning requirements for rear yard and front yard, contrary to ZR §§ 23-47 and 23-45; and

WHEREAS, this application was filed concurrently with a companion application brought under BSA Cal. No. 109-05-BZ, for an adjacent single family dwelling at 226-22 Prospect Court, Lot 76, decided this same date; and

WHEREAS, the Board notes that the subject site was before the Board in 2004, pursuant to a variance application filed under Cal. No. 365-03-BZ; the application sought an additional side yard waiver as well as authorization to re-use illegal construction at the premises (discussed further below); and

WHEREAS, the Board dismissed this application without prejudice for failure to prosecute; during the hearing process, the Board repeatedly informed the applicant that the site plan was unacceptable as it did not provide the required side yards, but the applicant did not submit a revised plan; and

WHEREAS, subsequently, the applicant filed the instant application and the companion application; and

WHEREAS, the Board notes that the original version of the current applications proposed two semi-detached homes; and

WHEREAS, after the Board expressed concern that this proposal was out of character with the neighborhood, the

applicant revised the proposal to reflect detached homes; and

WHEREAS, initially, the applicant only presented the Board with a front yard objection for this proposal; however, during the course of the hearing process, the Board ascertained that the proposed dwelling at the subject premises also required a rear yard objection, since it was located more than 100 ft. from an intersection and thus did not qualify for the exemption from rear yard; and

WHEREAS, instead, a 10 ft. rear yard is required for this interior lot portion; the applicant will provide 5 ft.; and

WHEREAS, the applicant states, and the Board agrees, that placing the proposed dwelling within this 100 ft. distance from the corner would have required that the development proceed as a semi-detached scheme, which is less desirable given the length and narrowness of the lot; and

WHEREAS, a public hearing was held on this application on January 24, 2006, after due notice by publication in *The City Record*, with continued hearings on March 7, 2006, April 11, 2006, and then to decision on May 16, 2006, on which date the decision was deferred until June 13, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins; and

WHEREAS, Community Board 13, Queens, recommends disapproval of the revised version of this application, stating that the proposed three ft. front yard where a 10 ft. front yard is required (along Prospect Avenue) is inadequate and incompatible with the surrounding homes; and

WHEREAS, certain neighbors to the site appeared at hearing in opposition to this application, claiming that: (1) the illegal construction of dwellings that did not comply with applicable zoning regulations caused damage to their property; (2) the survey used by the applicant is incorrect as to the location of the rear lot line; and (3) the site is improperly fenced and poorly maintained; all of these issues are addressed below; and

WHEREAS, the record indicates that the subject premises is located on the northwest corner of Prospect Court and 225th Street; and

WHEREAS, the site consists of two tax lots, Lot 74 (the subject lot) and Lot 76 (the adjacent lot), which together are one zoning lot; and

WHEREAS, the site is a 26.5 ft. wide by 184.2 ft. deep lot, with a total lot area of 4,976 sq. ft.; and

WHEREAS, the site is currently occupied by partially constructed dwellings, built pursuant to permits that were determined by DOB to have been issued in error; and

WHEREAS, these dwellings do not comply with the front yard and side yard requirements, and, at the suggestion of the Board, will be completely razed, including foundations; and

WHEREAS, on Lot 74, which is the lot further from the corner of Prospect Court and 225th Street, it is proposed to construct a two-story and cellar, single-family detached dwelling, 18.5 ft. in width by 37 ft. in depth, with a complying floor area of 1,369 sq. ft. (0.55 FAR); and

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WHEREAS, this dwelling will comply in all respects with the applicable zoning parameters except for: (1) the front yard along Prospect Court; a ten ft. front yard is required, but a three ft. side yard is proposed; and (2) the rear yard behind the proposed dwelling; a ten ft. rear yard is required, but a five ft. rear yard is proposed; and

WHEREAS, the home will also be built on new foundations instead of those of the illegal construction, and will be fully detached from the proposed neighboring home on Lot 76, with approximately 70 ft. between the two homes; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties in developing the subject lot in compliance with underlying district regulations: the 26.5 ft. width of the site would result in an as of right building of only 6.5 ft. in width, if both the rear yard and front yard requirements were applied; and

WHEREAS, the applicant states that the width of the site is insufficient to sustain a habitable development that complies with all applicable yard requirements, thus necessitating the requested seven ft. front yard waiver and five ft. rear yard waiver; and

WHEREAS, the applicant has submitted a radius diagram that illustrates that the configuration of the site and its width are unique conditions relative to other sites in the neighborhood; and

WHEREAS, in particular, the Board observes that the subject site is the only residentially zoned site in the neighborhood that has such a wide street frontage, and which abuts the rear yards of adjacent properties for its entire width; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique condition creates practical difficulty in developing the site in compliance with the applicable zoning provisions concerning yards for corner lots; and

WHEREAS, the applicant states that without the requested waiver, no residence could be constructed on the property; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict compliance with the applicable zoning requirements will result in any development of the property; and

WHEREAS, the applicant states that the building will comply with R3-2 zoning regulations in all other respects other than front and rear yard; and

WHEREAS, in particular, the applicant notes that the plans for the proposed dwelling on Lot 74 reflect a 25'-0" side yard and a complying distance between it and the other proposed dwelling on Lot 76; and

WHEREAS, at hearing, the Board expressed concern about the proposed construction, given the allegations about property damage to the neighboring properties from the illegal construction, and asked the applicant to clarify that the cellar of the proposed building will not extend to the rear lot line or include any portion of the existing illegal foundation; and

WHEREAS, in response, the applicant cited to the cellar plan, which indicates that the cellar will not be built to the lot line and that none of the foundation would be retained; and

WHEREAS, the Board also expressed concern about the security and cleanliness of the site, and asked the applicant to provide pictures showing that the site had been properly fenced and cleaned up; and

WHEREAS, in response, the applicant provided photos of the fence, and submitted a receipt for debris cleaning services; and

WHEREAS, the applicant subsequently submitted pictures showing that the site was cleaned; and

WHEREAS, the Board notes that it is imposing conditions in this resolution highlighting the need to comply with all Building Code requirements regarding protection of adjacent property and site safety and cleanliness during construction; and

WHEREAS, finally, as to the survey, the Board notes that although the neighbors complained that the survey submitted by the applicant was inaccurate, the property line dispute is not properly before it, as the subject application is one for a variance; and

WHEREAS, further, disputes as to property damage should be resolved in another forum, if necessary; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board notes that the depth of the site and its location on the corner are not conditions that were created by the owner; instead, they are pre-existing conditions inherent to the site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, because the only requested waivers are for front and rear yard, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 72-21, to permit, within an R3-2 zoning district, the proposed construction of a two-story, single-family residence, which does not comply with the zoning requirements for rear yard and front yard, contrary to ZR § 23-47 and 23-45; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 28, 2006"–(5) sheets and "June 6, 2006"–(1) sheet; and *on further condition*:

THAT there shall be no habitable floor area in the attic;
THAT the above condition shall be listed on the

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certificate of occupancy;

THAT a valid Demolition permit shall be obtained within 120 days from the date of this grant;

THAT professional certification of the Demolition permit, or any other permit related to the construction of the subject building, is not permitted;

THAT the owner shall demolish the existing illegal construction, including the foundation, pursuant to a validly issued Demolition permit, issued upon examination by the Department of Buildings, and said Demolition permit shall have received sign-off by DOB prior to the issuance of any New Building, excavation, or foundation permit;

THAT during demolition, excavation, foundation construction, and building construction, all applicable Building Code and other legal requirements pertaining to protection of adjacent structures, underpinning, establishment of property boundary lines, and site security, fencing, and upkeep shall be complied with;

THAT except for a front yard along Prospect Court of three ft. and a rear yard of 5 ft., the subject lot shall comply with all R3-2 zoning district requirements, as reviewed and approved by DOB;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 13, 2006.

109-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – Under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #76, the companion case, 108-05-BZ is Tax Lot #74 on the same zoning lot.

PREMISES AFFECTED – 224-26 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot

76, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug

For Opposition: Judith Charrington.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 2, 2006, acting on Department of Buildings Application No. 402039511, reads, in pertinent part:

“Proposed one family dwelling without a required front yard is contrary to Section 23-45 ZR and must be referred to the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district, the proposed construction of a two-story, single-family residence, which does not comply with the zoning requirement for front yard, contrary to ZR § 23-45; and

WHEREAS, this application was filed concurrently with a companion application brought under BSA Cal. No. 108-05-BZ, for an adjacent single family dwelling at 224-22 Prospect Court, Lot 74, decided this same date; and

WHEREAS, the Board notes that the subject site was before the Board in 2004, pursuant to a variance application filed under Cal. No. 365-03-BZ; the application sought an additional side yard waiver as well as authorization to re-use illegal construction at the premises (discussed further below); and

WHEREAS, the Board dismissed this application without prejudice for failure to prosecute; during the hearing process, the Board repeatedly informed the applicant that the site plan was unacceptable as it did not provide the required side yards, but the applicant did not submit a revised plan; and

WHEREAS, subsequently, the applicant filed the instant application and the companion application; and

WHEREAS, the Board notes that the original version of the current applications proposed two semi-detached homes; and

WHEREAS, after the Board expressed concern that this proposal was out of character with the neighborhood, the applicant revised the proposal to reflect detached homes; and

WHEREAS, a public hearing was held on this application on January 24, 2006, after due notice by publication in *The City Record*, with continued hearings on March 7, 2006 and April 11, 2006, and then to decision on May 16, 2006, on which date the decision was deferred until June 13, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar,

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Commissioner Chin and Commissioner Collins; and

WHEREAS, Community Board 13, Queens, recommends disapproval of the revised version of this application, stating that the proposed three ft. front yard where a 10 ft. front yard is required (along Prospect Avenue) is inadequate and incompatible with the surrounding homes; and

WHEREAS, certain neighbors to the site appeared at hearing in opposition to this application, claiming that: (1) the illegal construction of dwellings that did not comply with applicable zoning regulations caused damage to their property; (2) the survey used by the applicant is incorrect as to the location of the rear lot line; and (3) the site is improperly fenced and poorly maintained; all of these issues are addressed below; and

WHEREAS, the record indicates that the subject premises is located on the northwest corner of Prospect Court and 225th Street; and

WHEREAS, the site consists of two tax lots, Lot 76 (the subject lot) and Lot 74 (the adjacent lot), which together are one zoning lot; and

WHEREAS, the site is a 26.5 ft. wide by 184.2 ft. deep corner lot, with a total lot area of 4,976 sq. ft.; and

WHEREAS, the site is currently occupied by partially constructed dwellings, built pursuant to permits that were determined by DOB to have been issued in error; and

WHEREAS, these dwellings do not comply with the front yard and side yard requirements, and, at the suggestion of the Board, will be completely razed, including foundations; and

WHEREAS, on Lot 76, it is proposed to construct a two-story and cellar, single-family detached dwelling, 18.5 ft. in width by 37 ft. in depth, with a complying floor area of 1,369 sq. ft. (0.55 FAR); and

WHEREAS, this dwelling will comply in all respects with the applicable zoning parameters except for the front yard along Prospect Court; a ten ft. front yard is required, but a three ft. side yard is proposed; and

WHEREAS, the home will also be built on new foundations instead of those of the illegal construction, and will be fully detached from the proposed neighboring home on Lot 74, with approximately 70 ft. between the two homes; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties in developing the subject lot in compliance with underlying district regulations: the 26.5 ft. width of the site would result in an as of right building of approximately 11 ft. in width, if the front yard requirement was fully applied; and

WHEREAS, the applicant states that the width of the site is insufficient to sustain a habitable development that complies with all applicable yard requirements, thus necessitating the requested seven ft. front yard waiver; and

WHEREAS, the applicant has submitted a radius diagram that illustrates that the configuration of the site and its width are unique conditions relative to other sites in the neighborhood; and

WHEREAS, in particular, the Board observes that the

subject site is the only residentially zoned site in the neighborhood that has such a wide street frontage, and which abuts the rear yards of adjacent properties for its entire width; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique condition creates practical difficulty in developing the site in compliance with the applicable zoning provisions concerning yards for corner lots; and

WHEREAS, the applicant states that without the requested waiver, no residence could be constructed on the property; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict compliance with the applicable zoning requirements will result in any development of the property; and

WHEREAS, the applicant states that the building will comply with R3-2 zoning regulations in all other respects other than front and rear yard; and

WHEREAS, in particular, the applicant notes that the plans for the proposed dwelling on Lot 76 reflect complying side yards, and a complying distance between it and the other proposed dwelling on Lot 74; and

WHEREAS, at hearing, the Board expressed concern about the proposed construction, given the allegations about property damage to the neighboring properties from the illegal construction, and asked the applicant to clarify that the cellar of the proposed building will not extend to the rear lot line or include any portion of the existing illegal foundation; and

WHEREAS, in response, the applicant cited to the cellar plan, which indicates that the cellar will not be built to the lot line and that none of the foundation would be retained; and

WHEREAS, the Board also expressed concern about the security and cleanliness of the site, and asked the applicant to provide pictures showing that the site had been properly fenced and cleaned up; and

WHEREAS, in response, the applicant provided photos of the fence, and submitted a receipt for debris cleaning services; and

WHEREAS, the applicant subsequently submitted pictures showing that the site was cleaned; and

WHEREAS, the Board notes that it is imposing conditions in this resolution highlighting the need to comply with all Building Code requirements regarding protection of adjacent property and site safety and cleanliness during construction; and

WHEREAS, finally, as to the survey, the Board notes that although the neighbors complained that the survey submitted by the applicant was inaccurate, the property line dispute is not properly before it, as the subject application is one for a variance; and

WHEREAS, further, disputes as to property damage should be resolved in another forum, if necessary; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the

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surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board notes that the depth of the site and its location on the corner are not conditions that were created by the owner; instead, they are pre-existing conditions inherent to the site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, because the only requested waivers are for front and rear yard, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 72-21, to permit, within an R3-2 zoning district, the proposed construction of a two-story, single-family residence, which does not comply with the zoning requirements for front yard, contrary to ZR § 23-45; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 28, 2006"-(5) sheets and "June 6, 2006"-(1) sheet; and *on further condition*:

THAT there shall be no habitable floor area in the attic;

THAT the above condition shall be listed on the certificate of occupancy;

THAT a valid Demolition permit shall be obtained within 120 days from the date of this grant;

THAT professional certification of the Demolition permit, or any other permit related to the construction of the subject building, is not permitted;

THAT the owner shall demolish the existing illegal construction, including the foundation, pursuant to a validly issued Demolition permit, issued upon examination by the Department of Buildings, and said Demolition permit shall have received sign-off by DOB prior to the issuance of any New Building, excavation, or foundation permit;

THAT during demolition, excavation, foundation construction, and building construction, all applicable Building Code and other legal requirements pertaining to protection of adjacent structures, underpinning, establishment of property boundary lines, and site security, fencing, and upkeep shall be complied with;

THAT except for a front yard along Prospect Court of three ft. and a rear yard of 5 ft., the subject lot shall comply with all R3-2 zoning district requirements, as reviewed and approved by DOB;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 13, 2006.

15-06-BZ

APPLICANT – Eric Palatnik, PC for the Yeshiva Tifereth Moshe, Owner.

SUBJECT – Application January 26, 2006 – Zoning Variance (bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the construction of a new yeshiva located in an R4 zoning district. The proposed variance would allow modifications of zoning requirements for lot coverage, side yards, rear yard and height and setback; contrary to Z.R. §§ 24-11, 24-35, 24-36, 24-521 and 24-551.

PREMISES AFFECTED – 147-22 73rd Avenue located on the south side of 73rd Avenue between 147th and 150th streets (Block 6682, Lots 11 and 13), Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik, Mark Mariscal and Don Goldschein.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 3, 2006, acting on Department of Buildings Application No. 402256946, reads, in pertinent part:

- “1-Proposed building exceeds the maximum lot coverage permitted by ZR 24-11.
- 2-Proposed building does not meet the minimum side yard requirements of ZR 24-35.
- 3-Proposed building does not meet the minimum rear yard requirements of ZR 24-36.
- 4-Proposed building violates sky exposure plane and is contrary to ZR 24-521.
- 5-Proposed building does not meet the minimum side setback requirements of ZR 24-551.”; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R4 zoning district, a proposed three-story plus cellar Use Group 3 yeshiva, which does not comply with lot coverage, side yard, rear yard, sky exposure plane, and side setback requirements for community facilities, contrary to ZR §§ 24-11, 24-35, 24-36, 24-521, and 24-551; and

WHEREAS, a public hearing was held on this

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application on May 9, 2006, after due notice by publication in *The City Record*, and then to decision on June 13, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 8, Queens, recommends conditional approval of the application with recommendations that there be an interior space for garbage storage, that the design of the façade be compatible with neighboring buildings, and that a fence be erected around the play area; and

WHEREAS, City Councilmember James F. Gennaro has also expressed support for this application; and

WHEREAS, the applicant also submitted affidavits from nearby affected property owners indicating their support of the application; and

WHEREAS, this application is being prosecuted on behalf of Yeshiva Tifereth Moshe, a non-profit religious entity (hereinafter, the "Yeshiva"); and

WHEREAS, the subject premises is located on the south side of 73rd Avenue, between 147th and 150th Streets, and is currently vacant except for remnants of a foundation; and

WHEREAS, the applicant proposes to construct a 44'-6" high building (35 feet is the maximum permitted) without a setback (a setback is required at 35 feet), with 14,267 sq. ft. of floor area (15,246 sq. ft. is the maximum permitted); a FAR of 1.87 (2.0 FAR is permitted for a community facility), with Use Group ("UG") 3 yeshiva use space on the cellar through third floors; and

WHEREAS, the applicant also proposes 66 percent lot coverage (a maximum of 55 percent is permitted); a full encroachment into the side yard at the cellar level (an 8'-0" side yard is required); an encroachment into the sky exposure plane for a portion of the third floor; and a non-complying rear yard above the permitted obstruction on the first floor (a 30'-0" rear yard is required); and

WHEREAS, consequently, the vertical configuration of the building will be as follows: the cellar will be 6'-6" below grade and 5'-6" above grade, with an additional 3'-0" non-cellar mechanical space above grade; the first, second, and third floors will each have a slab to slab height of 12'-0"; and the total height will be 44'-6", exclusive of mechanicals; and

WHEREAS, the cellar and mechanical floor will not set back and will provide partial 8'-0" side yards and a partial 15'-0" front yard; the first, second, and third floors will provide a full 8'-0" of open space at both sides and 15'-0" at the front; and the third floor will be set back 15'-0" from the rear lot line; and

WHEREAS, the proposed building will contain ten classrooms, a full dining room/multi-purpose room and Kosher kitchen, administrative and staff offices, and outdoor recreation space to be located on the terrace at the third floor and roof; and

WHEREAS, the applicant states that the following is the primary programmatic need of the Yeshiva: sufficient classroom and assembly space to accommodate current and future kindergarten through third grade students at one facility; and

WHEREAS, as to the space needs, the applicant notes that

the floor area requested is less than the maximum allowed for the district, but that due to the young age of the students and the need for constant their supervision, the school runs more efficiently if housed in fewer large floors, rather than four or more with smaller floor plates; and

WHEREAS, the applicant represents that a majority of students live in the neighborhood surrounding the subject site; and

WHEREAS, the applicant asserts that relocating the school to a Yeshiva-owned building in a neighborhood where many of the students live will also serve its program needs; and

WHEREAS, the applicant states that the proposed amount of classrooms (ten) would accommodate the current enrollment of 250 students and allow for continued growth; the as-of-right scenario would only allow for six classrooms; and

WHEREAS, the Board accepts that having the classrooms for younger students in close proximity to each other and on fewer floors in the same building and having the school building in the neighborhood where many of the students live are both legitimate programmatic needs of the Yeshiva; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious educational institution, is entitled to significant deference under the case law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: the existing site does not provide the requisite amount of lot area to comply with applicable lot coverage, yard and setback requirements and still allow development of a building that would meet the programmatic needs of the Yeshiva; and

WHEREAS, specifically, the applicant states that the required FAR cannot be accommodated within the as-of-right yard and sky exposure plane parameters and allow for efficient floor plates that will accommodate the young student body, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant claims that a complying building would result in a taller building with irregular floor plates at the upper floors because of the sky exposure plane requirement, which would compromise the ability of the Yeshiva to occupy the building in a manner that meets its programmatic needs; and

WHEREAS, the applicant argues that the requested yard and sky exposure plane waivers would enable the Yeshiva to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating a uniform floor plate, the waivers also allow the Yeshiva's height to fit into the context of the neighborhood; and

WHEREAS, the applicant represents that the site has an unusually high water table which prevents the foundation from starting below seven to eight feet; and

WHEREAS, the applicant asserts that the inability to provide a full cellar below grade interferes with the Yeshiva's ability to meet all its programmatic needs on site, and requires

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an encroachment into the side yard at that level; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical condition, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant also notes that there is a three-story multiple dwelling located two buildings to the east of the site and that there are a number of community facilities interspersed amongst single family homes within the immediate vicinity; and

WHEREAS, as noted above, the applicant has submitted affidavits in support of the project from all but two immediate neighbors who could not be reached; and

WHEREAS, at hearing, the Board requested that the applicant decrease the floor to floor height in an effort to bring down the total building height; and

WHEREAS, at hearing, the project architect provided testimony that the floor to floor height was necessary to accommodate for mechanicals on each floor and that this dimension was standard for this kind of facility; and

WHEREAS, the applicant also submitted a chart noting six other similar educational institutions in Brooklyn and Queens with comparable floor to floor heights; and

WHEREAS, the applicant noted that the traffic impact would be minimal as a majority of students live nearby and would walk to school; and

WHEREAS, the Board observes that the proposed floor area and the proposed use are as of right; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Yeshiva could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Yeshiva the relief needed to both meet its programmatic needs and to construct a building

that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.06BSA051Q, dated May 9, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the School Safety Engineering Division of the New York City Department of Transportation (DOT) has reviewed the subject proposal for potential impacts regarding student pedestrian safety as noted in a letter dated April 11, 2005; and

WHEREAS, the April 11, 2005 DOT letter states that “[w]e have no objection for the proposed school at the above-mentioned location;” and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, a proposed three-story plus cellar yeshiva, which does not comply with lot coverage, side yard, rear yard, sky exposure plane, and side setback requirements for community facilities, contrary to ZR §§ 24-11, 24-35, 24-36, 24-521, and 24-551, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received May 30, 2006” – ten (10) sheets; and *on further condition*:

THAT any change in ownership, control or ownership of the building shall require the prior approval of the Board;

THAT there shall be an 11’-0” decorative fence enclosing the play area on the third floor and roof;

THAT all fencing in the rear yard shall comply with

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Building Code regulations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT roof-top mechanicals shall comply with all applicable Building Code and other legal requirements, as reviewed and approved by the Department of Buildings; and

THAT some of the parameters of the subject building are as follows: three stories plus a cellar, a community facility and total FAR of 1.87; lot coverage of 66 percent; and a total height of 44'-6"; other parameters are as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 13, 2006.

28-06-BZ

APPLICANT – Harold Weinberg, P.E., for Moshe Plutchok, owner.

SUBJECT – Application February 16, 2006 – Special Permit, Z.R. §73-622 for the enlargement of an existing single family home which seeks to vary Z.R. §23-141 for increase in floor area, lot coverage and open space ratio, Z.R. §23-461 for side yards and Z.R. §23-47 for less than the required rear yard. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 158 Beaumont Street, west side, 300' north of Oriental Boulevard, between Oriental Boulevard and Hampton Avenue, Block 8733, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 14, 2006, acting on Department of Buildings Application No. 302063451, reads, in pertinent part:

“[Proposed enlargement]

1. Creates a new non-compliance with respect to lot coverage and is contrary to Section 23-141 of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to floor area ratio and open space and is contrary to Section 23-141 ZR.
3. Creates a new non-compliance with respect to rear yard and is contrary to Section 23-47 ZR.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, with a continued hearing on May 16, 2006, and then to decision on June 13, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the Manhattan Beach Community Group recommended disapproval of an earlier version of the application, which proposed an FAR of 1.07, contending that this FAR would result in a home that would negatively impact the neighborhood character; and

WHEREAS, the subject lot is located on Avenue M at the northeast corner of Avenue M and East 21st Street; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 1,316 sq. ft. (0.33 FAR) single family dwelling; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,316 sq. ft. (0.33 FAR) to 3,948.5 sq. ft. (0.99 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.60 FAR, with attic bonus); and

WHEREAS, the proposed enlargement will decrease the open space from 2,684 sq. ft. to 2,377 sq. ft. (the minimum required open space is 2,600 sq. ft.) and increase the lot coverage from 23.2% to 41.3% (the maximum lot coverage is 35%); and

WHEREAS, the proposed enlargement will reduce the rear yard from 24'8" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the enlargement will maintain the existing side yards, and will result in a reduction in the front yard

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from 25'-2" to 18'-0"; the front yard will still comply with the minimum 15 ft. requirement; and

WHEREAS, initially, the applicant proposed a perimeter wall height of 22'-6", but reduced it to 21'-0" at the Board's request; this height complies with the district regulations; and

WHEREAS, additionally, the applicant reduced the proposed FAR from 1.07 to 0.99, also at the Board's request; and

WHEREAS, the Board notes that this FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, the Board also notes that the proposed front yard, though diminished, still complies with applicable R3-1 district requirements, and that the existing side yard width dimensions will be maintained; and

WHEREAS, finally, the Board observed other large homes in the neighborhood on its site visit, and finds that the proposed home is compatible with these other homes; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "May 30, 2006"-(7) sheets and "June 9, 2006"-(3) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the total FAR on the premises, including the attic, shall not exceed 0.99;

THAT the total attic floor area shall not exceed 753 sq. ft., as confirmed by the Department of Buildings;

THAT DOB shall review and approve the location of any garage

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 13, 2006.

194-04-BZ thru 199-04-BZ

APPLICANT – Augusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179), Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178), Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177), Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176), Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175), Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for continued hearing.

286-04-BZ & 287-04-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.

SUBJECT – Application August 18, 2004 – Under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED –

85-78 Santiago Street, west side, 11.74' south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#13), Borough of Queens.

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85-82 Santiago Street, west side, 177' south of
McLaughlin Avenue, Block 10503, Part of Lot 13
(tent.#15), Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Kurt E. Huppe, Linda Valentino, Hueichun Shing and Tom Tang.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18,
2006, at 1:30 P.M., for decision, hearing closed.

351-04-BZ

APPLICANT – The Agusta Group, for Stahva Realty, owner.
SUBJECT – Application November 1, 2004 – Under Z.R.
§73-44 – to allow parking reduction for proposed
enlargement of existing office building located in an R6B/C2-
2.

PREMISES AFFECTED – 210-08/12 Northern Boulevard,
thru lot between Northern Boulevard and 45th Road, 150' east
of 211th Street, Block 7309, Lots 21 and 23 (Tentative Lot
21), Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Sol Korman and Hiram Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18,
2006, at 1:30 P.M., for decision, hearing closed.

381-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Zvi Realty, LLC,
owner.

SUBJECT – Application December 2, 2004 - Variance
pursuant to Z.R. Section 72-21 to permit the construction of a
four-story building to contain 20 residential units with 10
parking spaces. The site is currently an undeveloped lot
which is located in an M1-1 zoning district. The proposal is
contrary to district use regulations pursuant to Z.R. Section
42-00.

PREMISES AFFECTED – 83 Bushwick Place a/k/a 225-227
Boerum Street, northeast corner of the intersection of Boerum
Street and Bushwick Place, Block 3073, Lot 97, Borough of
Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Laid over to July 25,
2006, at 1:30 P.M., for continued hearing.

47-05-BZ

APPLICANT – Cozin O'Connor, LLP, for AMF Machine,
owner.

SUBJECT – Application March 1, 2005 – Under Z.R. §72-21
to permit the proposed eight story and penthouse mixed-use
building, located in an R6B zoning district, with a C2-3
overlay, which exceeds the permitted floor area, wall and
building height requirements, is contrary to Z.R. §23-145
and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast
corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Geis.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to August 15,
2006, at 1:30 P.M., for decision, hearing closed.

204-05-BZ

APPLICANT – Harold Weinberg, for Amalia Dweck, owner.
SUBJECT – August 26, 2005 - Pursuant to ZR §73-622,
Special Permit for an enlargement of a two-family residence
which increases the degree of non-compliance for floor area,
open space, lot coverage and side yards is contrary to
ZR§§23-141 and 23-461. The application also proposed an
as-of-right change from a one-family dwelling to a two-
family dwelling.

PREMISES AFFECTED – 2211 Avenue T, north side, 57'
east of East 22nd Street, between East 22nd and East 23rd
Streets, Block 7301, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to July 18,
2006, at 1:30 P.M., for continued hearing.

290-05-BZ

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim
Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated
4/19/06 - Variance pursuant to Z.R. Section 72-21 to permit a
catering hall (Use Group 9) accessory to a synagogue and
yeshiva (Use Groups 4 & 3). The site is located in an R5
zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side,
127.95' east of the intersection of 53rd and 18th Avenue,
Block 5480, Lot 14, Borough of Brooklyn.

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COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein, Chaim Weinberg, Mendez Zilberberg, Abraham Ginhorn, Yechid Kaufman and Armen Moss.

For Opposition: Yoel Steinberg, Rabbi Ismael Steinberg and Bluma ?

For Administration: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 1:30 P.M., for continued hearing.

60-06-A

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application April 5, 2006 - Request pursuant to Section 666 of the New York City Charter for a reversal of DOB's denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant:

Zilberberg, Abraham Ginhorn, Yechid Kaufman and Armen Moss.

For Opposition: Yoel Steinberg, Rabbi Ismael Steinberg and Bluma ?

For Administration: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 1:30 P.M., for continued hearing.

311-05-BZ/310-05-A

APPLICANT – Joseph P. Morsellino, Esq., for Bernard F. Dowd, owner.

SUBJECT – Application October 19, 2005 - Special Permit pursuant to Z.R. Section 73-27 to legalize the existing second floor use in an existing funeral establishment. The site is located in a C4-2 zoning district. A case (310-05-A) was filed with the BZ case on 10/19/05 since the C of O lapsed for the prior A case (232-52-A).

PREMISES AFFECTED – 165-18/28 Hillside Avenue, Northeast corner Hillside Avenue and Merrick Boulevard, Block 9816, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for continued hearing.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for 908 Clove Road,

LLC, owner.

SUBJECT – Application December 22, 2005 – Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to Z.R. §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik, Randy Lee, Robert Pauls, Henry Arlin Salmon and Hiram Rothkrug.

For Opposition: Vincent DiGesu.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for continued hearing.

4-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Isaac Tessler and Miriam Tessler, owners.

SUBJECT – Application January 5, 2006 – Special Permit Z.R. §73-622 for an enlargement of an existing single family residence to vary ZR§23-141 for open space and floor area and 23-47 for less than the minimum rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1435 East 21st Street, East 21st Street between Avenue M and Avenue N, Block 7657, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 7:00 P.M.

BULLETIN

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June 29, 2006

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SATISH BABBAR, *Vice-Chair*

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CHRISTOPHER COLLINS

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89-06-A	19 Beach 220 th Street, Queens
263-03-A	1638 Eighth Avenue, Brooklyn
231-04-A	240-79 Depew Avenue, Queens
355-05-BZY	422 Prospect Avenue, Brooklyn
356-05-A & 357-05-A	150 & 152 Beach 4 th Street, Queens
361-05-BZY	1638 8 th Avenue, Brooklyn
366-05-A	1638 8 th Avenue, Brooklyn

Afternoon Calendar 473

Affecting Calendar Numbers:

14-05-BZ	300 West 56 th Street, Brooklyn
52-05-BZ	6209 11 th Avenue, Brooklyn
89-05-BZ	18 Heyward Street, Brooklyn
321-05-BZ	245-02 Horace Harding Expressway, Queens
146-04-BZ	191 Edgewater Street, Staten Island
124-05-BZ	482 Greenwich Street, Manhattan
128-05-BZ	1406 East 21 st Street, Brooklyn
151-05-BZ	100 Varick Street, Manhattan
202-05-BZ	11-11 131 st Street, Queens
334-05-BZ	933-945 Madison Avenue, Manhattan
338-05-BZ	2224 East 14 th Street, Brooklyn
352-05-BZ	21-41 Mott Street, Queens
358-05-BZ	438 Port Richmond Avenue, Staten Island
11-06-BZ	1245 East 22 nd Street, Brooklyn
16-06-BZ	2253 East 14 th Street, Brooklyn
26-06-BZ	145 East Service Road, Staten Island
33-06-BZ	1457 Richmond Road, Staten Island
62-06-BZ	657 Logan Avenue, Bronx

DOCKETS

New Case Filed Up to June 20, 2006

125-06-A

43 Kildare Walk, Northeast corner of Kildare Walk & Breezy Point Boulevard, Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 35, Article 3-Proposed reconstruction and enlargement of an existing single family dwelling, upgrade of an existing private disposal system.

126-06-BZ

1762 East 23rd Street, East 23rd Street between Quentin Road and Avenue R, Block 6805, Lot 33, Borough of **Brooklyn, Community Board: 15**. SPECIAL PERMIT-73-622-To permit the enlargement if a single family residence.

127-06-BZ

129 West 67th Street, Northside of 67th Street between Broadway and Amsterdam Avenue., Block 1139, Lot 1,8,57,107, Borough of **Manhattan, Community Board: 7**. Under 72-21-Applicate seeks a variance of floor area ratio and rear yard requirements to permit the enlargement of a community facility.

128-06-BZ

415 Washington Street, West side of Washington Street, on the corner formed by Vestry Street and Washington Street., Block 218, Lot 6, Borough of **Manhattan, Community Board: 1**. Under 72-21-for the construction og a nine story residential building.

129-06-BZ

43 Kings Place, Kings Place south of Kings Highway, Block 6678, Lot 97, Borough of **Brooklyn, Community Board: 11**. SPECIAL PERMIT-73-622-To allow the enlargement of a single family residence.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

AUGUST 8, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 8, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

565-57-BZ

APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner; Vandale Motors Incorporated, lessee.

SUBJECT – Application January 25, 2005 - Extension of Term/Amendment - to include a height change from the approved 17'-3" to 28'6" for the purpose of adding a storage mezzanine.

PREMISES AFFECTED – 5832 Broadway, a/k/a 196-198 West 239 Street, South east corner of Broadway and 239 Street, Block 3271, Lot 198, Borough of the Bronx.

COMMUNITY BOARD #8BX

1077-66-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Richmond Petroleum, Incorporated, owner.

SUBJECT – Application May 10, 2006 - Pursuant to ZR72-01 & 72-22 to reopen and amend the BSA resolution for a change of use to an existing gasoline service station with minor auto repairs. The amendment is to convert the existing auto repair bays to a convenience store as accessory use to an existing gasoline service station. The premise is located in C2-2 in an R3-2 zoning district.

PREMISES AFFECTED – 1320 Richard Terrace, Southwest corner of Bement Avenue, Block 157, Lot 9, Borough of Staten Island.

COMMUNITY BOARD #1SI

301-85-BZ

APPLICANT – Francise R. Angelino, Esq., for 58 East 86th Street, LLC, owner.

SUBJECT – Application April 25, 2006 – Application for an extension of term for a previously approved use variance which allowed ground floor retail at the subject premises located in a R10(PI) zoning district. In addition the application seeks a waiver of the Board's Rules and Procedures for the expiration of the term on February 11, 2006.

PREMISES AFFECTED – 58 East 86th Street, South side East 86th Street between Park and Madison Avenues, Block 1497, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #8M

59-02-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 - Reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a two family house located in the bed of mapped street (24th Aveue). Proposal seeks to add an additional two family dwelling in the bed of mapped stret thereby making three two- family dwellings. Premises is located within an R3-2 Zoning Disrict . Companion cases 160-02-A and 27-06-A. PREMISES AFFECTED – 23-81 89th Street, 583.67' Northeast of the corner of Astoria Boulevard & 89 Street, Block 1101, Lot 6, Borough of Queens.

COMMUNITY BOARD #3Q

160-02-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 - Reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a two family dwelling in the bed of a mapped street (24th Avenue). Proposal seeks to add an additional two family dwelling in the bed of a mapped street thereby making three two family dwellings. Premises is located within an R3-2 Zoning District .Companion cases 59-02-A and 27-06-A.

PREMISES AFFECTED – 24-01 89th Street, 532.67' northeast of the corner of Astoria Boulevard & 89 Street, Block 1101, Lot 8, Borough of Queens.

COMMUNITY BOARD #3Q

27-06-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 - Application filed under Section 35 of the General City Law to allow the construction of a two family dwelling located within the bed of a mapped street (24th Avenue). Premises is located within a R3-2 Zoning District. Companion cases 59-02-A II and 160-02-A II

PREMISES AFFECTED – 23-83 89th Street, 561.67' Northeast, the corner of Astoria Boulevard & 89 Street, Block 1101, Lot 7, Borough of Queens.

COMMUNITY BOARD #3Q

212-03-A

APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.

SUBJECT – Application April 4, 2006 - Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the constnction of a sinlge family dwelling located partially within the bed of a mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans.

PREMISES AFFECTED – 129-32 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block

CALENDAR

12891, Lot 2, Borough of Queens.
COMMUNITY BOARD #13Q

213-03-A

APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.

SUBJECT – Application April 4, 2006 - Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a single family dwelling located within the bed of mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans.

PREMISES AFFECTED – 129-36 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block 12891, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEALS CALENDAR

21-06-A

APPLICANT - Walter T. Gorman, PE, for Breezy Point Cooperative Incorporated, owner; Michael & Jennifer Esposito, lessee.

SUBJECT – Application February 7, 2006 - Proposed enlargement of an existing one family dwelling located in the bed of a mapped street, (Rockaway Point Boulevard), is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 28 Rockaway Point Boulevard, a/k/a State Road, N/S 85.09' East of Beach 179th Street, Block 16340, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

AUGUST 8, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday Afternoon*, August 8, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

175-05-BZ

APPLICANT – Eric Palatnik, P.C. for 18-24 Luquer Street Realty LLC, owner.

SUBJECT – Application July 28, 2005 - Zoning variance pursuant to Z.R. 72-21 to allow the construction of a proposed four (4) story multi-family dwelling containing sixteen (16) dwelling units and eight (8) accessory parking spaces. Project site is located in an M1-1 zoning district and is contrary to Z.R. 42-00.

PREMISES AFFECTED – 18-24 Luquer Street, Between Hicks Street and Columbia Street, Block 520, Lot 13,16, Borough of Brooklyn.

COMMUNITY BOARD #6BK

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application December 28, 2005 – Pursuant to Z. R. 73-44 Special Permit to permit the proposed retail, community facility & office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking & is contrary to ZR Sec. 36-21.

PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

40-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Ten Hanover LLC c/o The Witkoff Group, owner; Plus One Holding Incorporated, lessee.

SUBJECT – Application March 8, 2006 - Special Permit pursuant to Z.R. § 73-36 to allow the operation of a Physical Culture Establishment (PCE) on the cellar and sub-cellar levels in a 21-story mixed-use building. The PCE membership will be limited to employees of Goldman Sachs and residents of the subject premises in a space formerly occupied and used as an accessory PCE (1998 to 2004) for members of Goldman Sachs. The premises is located in a C5-5 (LM) zoning district. The proposal requests a waiver of Z.R. Section 32-00 (Use Regulations).

PREMISES AFFECTED – 10 Hanover Square, easterly block front of Hanover Square between Water Street and Pearl Street, Block 31, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

CALENDAR

66-06-BZ

APPLICANT – Slater & Beckerman, LLP, for Vaughn College of Aeronautics and Technology, owner.

SUBJECT – Application April 13, 2006 – Zoning variance pursuant Z.R. § 72-21- Application is filed by the Vaughn College of Aeronautics and Technology and seeks a variance to permit the construction of a new three story college dormitory that does not conform to the use regulations of the M1-1 zoning district.

PREMISES AFFECTED – 22-40 90th Street, east side of 90th Street the corner formed by the intersection of 23rd Avenue, Block 1064, Lot 100, Borough of Queens.

COMMUNITY BOARD #3Q

Jeffrey Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 20, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, April 11, 2006 as printed in the bulletin of April 20, 2006, Volume 91, No. 16. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

565-57-BZ

APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 5832 Broadway (5848 Broadway or 196-198 West 239th Street) southeast corner of Broadway and 239th Street, Block 3271, Lot 198, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Arcadius Kaszuba and Michael Rubinstein.

ACTION OF THE BOARD – Application withdrawn from dismissal.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

Adopted by the Board of Standards and Appeals, June 20, 2006.

565-57-BZ

APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 5832 Broadway (5848 Broadway or 196-198 West 239th Street) southeast corner of Broadway and 239th Street, Block 3271, Lot 198, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Arcadius Kaszuba and Michael Rubinstein.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for SOC calendar new cases.

289-58-BZ

APPLICANT – Eric Palatnik, P.C., for David Oil

Corporation, owner.

SUBJECT – Application April 25, 2006 – Extension of Term of a variance for ten years, which expired on November 25, 2005, for a gasoline service station (Sunoco Station) and an Amendment to legalize a small convenience store as an accessory to the UG16-Automotive Service Station. The premise is located in an C2-3/R-7A zoning district.

PREMISES AFFECTED – 398-410 Kings Highway, southwest corner of Kings Place, Block 6678, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application made pursuant to Z.R. § 11-411, for a reopening and extension of term of a prior grant for a automotive and gasoline service station, which expired on November 25, 2005; and

WHEREAS, a public hearing was held on this application on June 6, 2006, after due notice by publication in *The City Record*, with a continued hearing on June 20, 2006, and then to decision on June 20, 2006; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject 10,563 sq. ft. lot is located on Kings Highway at the southwest corner of Kings Place; and

WHEREAS, the site is located within an R7A (C2-3) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 22, 1960 when, under BSA Cal. No. 289-58-BZ, Vol. II, the Board granted an application for the erection and maintenance of a gasoline service station, with lubricatorium, minor repairs with hand tools only, non-automatic auto laundry, office, storage and sales of auto accessories, and parking of more than five motor vehicles awaiting service; and

WHEREAS, subsequently, the term has been extended and the grant amended by the Board at various times, most recently on March 4, 1997, under the subject calendar number, for a term of ten years from the expiration of the prior grant, expiring on November 25, 2005; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, pursuant to Z.R. § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon its review of the application, the Board finds it appropriate to grant the requested extension of

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term, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on November 22, 1960, so that as amended this portion of the resolution shall read: “to permit an extension of term, for an additional period of ten years from the expiration of the prior grant, to expire on November 25, 2015; *on condition* that all work shall substantially conform to drawings filed with this application marked ‘Received April 25, 2006’–(3) sheets and ‘June 13, 2006’–(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on November 25, 2015;

THAT the condition above shall be listed on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(N.B. 1730/60)

Adopted by the Board of Standards and Appeals, June 20, 2006.

540-84-BZ

APPLICANT – Kenneth H. Koons, for Herman Pieck, owner.
SUBJECT – Application December 8, 2005 – Pursuant to section Z.R. §52-332 to legalize the change in use of a custom cabinet workshop (UG16A) to auto repair shops (UG16B) and to extend the term of the variance for ten years. The previous term expired June 10, 2006. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, southwest corner of Bolton Avenue, Block 3473, Lot 43, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Kenneth H. Koons.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 4, 2006, acting on DOB Application No. 200940571 reads, in pertinent part:

“The legalization of the proposed change of use of the premises for motor vehicle repair shops and the extension of the term of variance beyond June 10,

2006, in an R3-2 zoning district, is contrary to Section 22-00 Z.R. and BSA Resolution Cal. No. 540-84-BZ and Certificate of Occupancy #58357.”; and

WHEREAS, this is an application under ZR §§ 11-412 and 11-413, on a site previously before the Board, to permit in an R3-2 zoning district, the legalization of the change from the previously approved Use Group 16 cabinet manufacturing use to a UG 16 automotive repair shop use, as well as minor interior changes related to this change of use, which is contrary to a variance previously granted under the subject calendar number; and

WHEREAS, a public hearing was held on this application on June 6, 2006 after due notice by publication in the *City Record*, and then to decision on June 20, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, additionally, City Council Member Annabel Palma recommends approval of this application; and

WHEREAS, the premises is located on the southwest corner of Soundview and Bolton Avenues and has a lot area of 9,927 sq. ft.; and

WHEREAS, the lot is improved with an automotive repair station with a floor area of 7,037 sq. ft.; and

WHEREAS, on June 10, 1986, under the subject calendar number, the Board permitted the erection of a one-story custom cabinet shop in an R3-2 zoning district, for a term of 20 years; and

WHEREAS, the record indicates that the custom cabinet shop closed in the early 1990s and that the automotive service/repair use has been continuous since 1993; and

WHEREAS, the record indicates that the only physical changes to the site since 1993 were in the interior, and include the addition of a spray booth and the relocation of partitions; and

WHEREAS, the application seeks to legalize the change in use from cabinetmaking workshop to automotive service and repair station, as well as the interior changes; and

WHEREAS, the Board has determined that the existing automotive service repair establishment will not impair the essential character or future use of development of the area; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under §§ 11-412 and 11-413 of the Zoning Resolution; and

Therefore, it is Resolved that the Board of Standards and Appeals issues a negative declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-412 and 11-413 and authorizes, in an R3-2 zoning district, the legalization of the change from the previously approved Use Group 16 cabinet manufacturing use to a UG 16 automotive repair shop

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use, as well as minor interior changes related to this change of use, which is contrary to a variance previously granted under the subject calendar number, *on condition* that all work substantially conforms to drawings as they apply to the objection above noted, filed with this application marked "Received May 1, 2006"-(1) sheet and "June 12, 2006"-(1) sheet; and *on further condition*;

THAT the term of the variance shall be limited to ten years from the date of this grant, expiring on June 20, 2015;

THAT there shall be no cars parked on, or obstructing, the sidewalk;

THAT the hours of operation shall be limited to 8:00 a.m. to 6:30 p.m., Monday through Saturday;

THAT fencing and screening shall be provided in accordance with BSA-approved plans;

THAT the premises shall be kept graffiti-free;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2006.

393-66-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Athena Properties, owner; Ace Dropcloth Co., lessee.

SUBJECT – Application May 2, 2006 – Application for a waiver of the Rules and Procedure and an extension of time to obtain a certificate of occupancy.

PREMISES AFFECTED – 453 East Tremont Avenue, East Tremont Avenue and Washington Avenue, Block 3034, Lot 52, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for decision, hearing closed.

374-71-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Evelyn DiBenedetto, owner; Star Toyota, lessee.

SUBJECT – Application February 12, 2004 – Pursuant to Z.R. §§72-01 and 72-22 for an extension of term of a variance permitting an automobile showroom with open

display of new and used cars (UG16) in a C2-2 (R3-2) district. The application also seeks an amendment to permit accessory customer and employee parking in the previously unused vacant portion of the premises.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 6269, Lots 14 and 20, located on the North West corner of Northern Boulevard and the Clearview Expressway, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Adam Rothkrug and Michael Koufakis.

For Opposition: Henry Euler and Kevin Wallace.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

169-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for ZKZ Associates, LP, owner; TSI West 80 Inc., dba New York Sports Club, lessee.

SUBJECT – Application October 21, 2005 – Pursuant to ZR73-36 for the Extension of Term for a Physical Culture Establishment (New York Sports Club) which expired on May 17, 2004.

PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

227-98-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for 41st Street Realty, LLC, owner; Gem Foods of Brooklyn, lessee.

SUBJECT – Application July 19, 2005 – Extension of term of a Special Permit for an eating and drinking establishment with an accessory drive-through facility. The premise is located in a C1-3(R-6) zoning district.

PREMISES AFFECTED – 41-01 4th Avenue, aka 400 41st Street, southeast corner of 4th Avenue and 41st Street, Block 719, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

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Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

197-00-BZII

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for SLG Graybar Sublease, LLC., owner; Equinox 44th Street Inc., lessee.

SUBJECT – Application November 2, 2005 – Pursuant to ZR73-11 and ZR73-36 Amendment to a previously granted Physical Culture Establishment (Equinox Fitness) for the increase of 4,527 sq. ft. in additional floor area.

PREMISES AFFECTED – 420 Lexington Avenue, 208’-4” north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for adjourned hearing.

112-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Doris Laufer, owner.

SUBJECT – Application May 15, 2006 - Pursuant to ZR72-01 and 72-21 for an Extension of Time to obtain a Certificate of Occupancy which expired on November 20, 2003 for a Community Use Facility-Use Group 4 (Congregation Noam Emimelech) and an Amendment that seeks to modify the previously approved plans for floor area/FAR – ZR24-11, front wall height-ZR24-521, front yard-ZR24-31, side yard-24-35, lot coverage-ZR24-11 & ZR23-141(b) and off-street parking requirement for dwelling units-ZR25-22.

PREMISES AFFECTED – 102 & 1406 59th Street, Block 5713, Lots 8 &10, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for continued hearing.

121-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Harbor Associates, owner.

SUBJECT – Application November 2, 2005 - Pursuant to ZR 73-11 for the proposed Extension of Term of Special Permit and Extension of Time to obtain a Certificate of Occupancy for a Physical culture Establishment (Harbor Fitness Club) which expired on January 1, 2006 is contrary to ZR32-10.

PREMISES AFFECTED – 9215 4th Avenue, aka 9216 5th

Avenue, south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

173-05-A

APPLICANT – Stuart Klein for Trevor Fray, owner.

SUBJECT – Application July 28, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 85-24 168th Place, west side of 168th Place, 200 feet south of the corner formed by the intersection of 18th Place and Gothic Drive. Block 9851, Lot 47, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed three-family, four-story building (the “Proposed Building”) under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on February 14, 2006 after due notice by publication in *The City Record*, with continued hearings on March 14, 2006, April 11, 2006 and June 6, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, the subject premises is an approximately 5,000 sq. ft. site fronting on 168th Place and was formerly occupied by a two-story residential structure; and

WHEREAS, the record indicates that the owner sought to subdivide the site into two lots, placing the Proposed Building on one of the new lots and an identical building on the other; and

WHEREAS, the premises is currently located within an R4A zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, the zoning change occurred on October 13, 2004 (hereinafter, the “Enactment Date”), when the City

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Council voted to adopt a zoning map amendment that affected the subject site; and

WHEREAS, the Proposed Building does not comply with the R4A district requirements, as that district only allows single and two family detached residences; and

WHEREAS, accordingly, the owner, represented by the applicant, made the instant vested rights application; and

WHEREAS, the Board observes that numerous cases establish that a vested rights claim must be predicated on a validly issued permit (see e.g. *Jayne Estates v. Raynor*, 22 N.Y.2d 417 (1968); *Reichenbach v. Windward at Southampton*, 364 N.Y.S.2d 283 (1975)); and

WHEREAS, thus, as a threshold matter in determining this appeal, the Board must find that the alleged work and expenditure claimed by the applicant as counting towards a vested rights determination was authorized by a valid permit; and

WHEREAS, the applicant claims that the following permits were obtained prior to the Enactment Date: (1) Demolition Permit No. 401865665, issued on or around May 21, 2004; and (2) Foundation Permit No. 402008723, issued on or around September 20, 2004 (hereinafter, the "Foundation Permit"); and

WHEREAS, the Board notes that the Foundation Permit was obtained pursuant to DOB's professional certification program by the developer's filing professional, and it did not receive a DOB plan examination prior to its issuance; and

WHEREAS, on June 9, 2004, the filing professional also submitted a professionally certified New Building Permit application, under Job No. 401954033 (for the Proposed Building); and

WHEREAS, this application was not approved at that time, and no New Building permit for the Proposed Building under this application was ever obtained, either prior to or after the Enactment Date; and

WHEREAS, additionally, no New Building Permit application was submitted for the adjacent building prior to the Enactment Date; and

WHEREAS, on October 28, 2004, which is after the Enactment Date, the New Building Permit application for the Proposed Building was erroneously professionally certified and approved as compliant with applicable laws by the owner's filing professional; and

WHEREAS, also on October 28, 2004, the owner's filing professional submitted a Subdivision Improvement application, in order to subdivide the site into two separate lots; and

WHEREAS, on October 29, 2004, the filing professional erroneously professionally certified and approved the New Building Permit application for the adjacent building, under Job No. 401954024; and

WHEREAS, no permits were obtained under either of the New Building Permit approvals after the Enactment Date; and

WHEREAS, additionally, the Subdivision Improvement application was not approved; instead, the subdivision application was objected to by DOB on November 4, 2005; and

WHEREAS, this led to further DOB action as to the erroneously professionally certified New Building Permit approvals; and

WHEREAS, on January 27, 2005, DOB sent a notice of its intent to revoke the New Building Permit approvals; and

WHEREAS, DOB subsequently revoked the New Building Permit approvals on July 21, 2005; and

WHEREAS, it appears that the applicant applied to the Board only for the right to vest the Proposed Building, and not the adjacent building, presumably because no New Building Permit application for the adjacent building was submitted to DOB prior to the Enactment Date, as noted above; and

WHEREAS, however, DOB states that its determination that there were no valid permits for development on the site applies to both the Proposed Building and the adjacent building; and

WHEREAS, the Board notes again that there was no subdivision approval prior to the Enactment Date, and that there were no New Building permits obtained before the Enactment Date; and

WHEREAS, the Board finds that the New Building Permit approvals erroneously professionally certified after the Enactment Date have no relevance as to the applicant's vested rights application; and

WHEREAS, notwithstanding the irrelevance of the erroneous New Building approvals, the applicant claims that the alleged work and expenditures undertaken by the owner subsequent to the obtainment of the professionally certified Foundation Permit can count towards vesting of the Proposed Building; and

WHEREAS, however, while the instant application was pending, DOB performed an audit of the Foundation Permit and determined that it was also invalid when issued; and

WHEREAS, the DOB audit revealed that the owner's filing professional failed to submit, or otherwise satisfy, the following items prior to professional certification approval of the Foundation Permit application: (1) zoning plan approval for both of the proposed dwellings; (2) Builder's pavement plan; (3) sewer connection approval; (4) boring test report; (5) preliminary architectural survey; (6) PC-1 checklist for all required items; (7) application for required construction equipment permit; and (8) five day notice to owners of adjacent properties and proof thereof; and

WHEREAS, accordingly, DOB sent a notice of its intent to revoke the Foundation Permit within ten days on February 14, 2006, to both the owner and the filing professional; and

WHEREAS, the applicant stated at hearing that this letter was not received by him personally or by the owner (but did not go so far as to say whether the filing professional received the letter); and

WHEREAS, the applicant also stated that regardless of receipt of the letter, no response would be necessary since there is no reason to respond to a DOB action on a permit that he believes is valid; and

WHEREAS, having received no response to the letter, DOB revoked the Foundation Permit approximately two months later on April 10, 2006; and

WHEREAS, the Board notes that the applicant had notice of the DOB audit of the Foundation Permit as early as February 7, 2006, the date of DOB's initial submission on

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this application; and

WHEREAS, this February 7 submission clearly states on page 2 that the audit revealed that the Foundation Permit did not comply with several provisions of the Building Code, and references the specific problems; and

WHEREAS, the Board observes that not only did the applicant have notice of the pending audit through this proceeding, but the applicant also had the opportunity to address the findings of the audit, notwithstanding the failure to respond directly to DOB; and

WHEREAS, because of this, the Board does not consider the allegation that the applicant himself or the owner did not receive the notice, even if true, relevant in any respect; and

WHEREAS, in fact, during the hearing process, the applicant availed himself of the opportunity to address certain of the DOB audit objections; and

WHEREAS, as to zoning plan approval, the applicant stated that zoning approval for the Proposed Development is not a requirement of a valid foundation permit; and

WHEREAS, however, DOB cites to Building Code § 27-164, which provides, in sum and substance, that applications for foundation permits shall be accompanied by a lot diagram as provided in Building Code § 27-157; and

WHEREAS, Building Code § 27-157 provides, in sum and substance, that a lot diagram must show compliance with the Zoning Resolution, and indicate the size, height, and location of the proposed construction; and

WHEREAS, the record reveals that no zoning information in the form of a lot diagram was submitted in conjunction with the Foundation Permit application itself; and

WHEREAS, the applicant notes that New Building Permit application No. 401954033, for the Proposed Building, contained zoning information, but did not contest the fact that this application was not professionally certified as approved (i.e. compliant with zoning and other applicable laws) by the owner's filing professional until after the Enactment Date; and

WHEREAS, DOB states that Building Code § 27-157 was not satisfied here because the filing professional who certified the New Building application as approved did so after the Enactment Date, when it no longer complied with the Zoning Resolution; and

WHEREAS, the applicant claims DOB routinely approves foundation permits without any zoning compliance review whatsoever, but no evidence of such approvals was submitted by the applicant; and

WHEREAS, further, while the Vice-Chair of the Board did opine at hearing that the zoning information for a proposed development could be reflected in a partially approved New Building application and that this could be acceptable by DOB for purposes of issuance of a foundation permit, he did not say that zoning approval in some form is unnecessary for issuance of a foundation permit; in fact, the Vice-Chair stated that a plan examiner would need to review the footprint of the proposed building for compliance with zoning; and

WHEREAS, thus, the applicant has not provided any

evidence that: (1) the Foundation Permit itself contained the required information, as outlined above; or (2) that the New Building Permit application was approved as compliant with zoning prior to the Enactment Date; and

WHEREAS, the Board agrees with DOB that merely filing zoning information at DOB in a separate application, which was not even partially approved prior to the Enactment Date, is not the equivalent of compliance with the above-stated Building Code requirements for the Foundation Permit; and

WHEREAS, as to the submission of proof of the required five-day notice to affected property owners of foundation work, also cited as a deficiency of the Foundation Permit in the DOB audit, the applicant stated that the owner submitted this proof to DOB, and that he would submit this into the record; and

WHEREAS, however, no submission of this proof was received by the Board; and

WHEREAS, thus, leaving aside the deficiency of zoning plan approval, there were seven other cited deficiencies raised by DOB in the audit that provide a basis for revocation of the professionally certified Foundation Permit; and

WHEREAS, in sum, having had a reasonable opportunity during the course of this proceeding to respond to the DOB audit of the Foundation Permit, the Board finds that the applicant offered no persuasive response to the cited deficiencies; and

WHEREAS, based upon the above, the Board finds that DOB's revocation of the Foundation Permit as invalid upon issuance was a rational and supportable exercise of its authority as the City agency charged with review of such permit applications and enforcement of the Zoning Resolution and Building Code; and

WHEREAS, the Board notes that the applicant conceded in his July 6, 2006 submission that a property owner must proceed under a validly issued permit in order for rights to vest; in the instant case, DOB has determined, and the Board had confirmed, that there was no valid permit of any type under which vesting could be obtained; and

WHEREAS, notwithstanding this concession, when confronted with the revocation of the Foundation Permit, the applicant argued at the final hearing on this application that DOB has no authority to revoke a permit, even if invalid on its face, retroactively to the date of its issuance; and

WHEREAS, the applicant appears to be arguing that for vesting purposes, a permit is valid, and therefore presumably compliant with zoning and other applicable laws, up to the point at which DOB reviews the permit and discovers that in fact it is not valid because it does not comply with zoning or some other law; and

WHEREAS, the Board observes that if this argument was accepted, compliance with zoning and other legal requirements at the time of permit issuance would be rendered meaningless; and

WHEREAS, vested rights could be obtained under any permit obtained through professional certification, whether or not compliant with applicable laws; and

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WHEREAS, as a consequence, developers and property owners would have an incentive to always professionally certify permit applications without first ascertaining whether the application and related plans complied with applicable laws; and

WHEREAS, the Board disagrees that it should modify, as suggested by the applicant, the well-established principle that a finding of common law vested rights must be predicated on a valid permit, especially when such modification is illogical, unprecedented, and results in an undesirable outcome; and

WHEREAS, nonetheless, the applicant claims that case law support this argument, and cited to certain cases at the last hearing, as well as in an unscheduled submission dated June 11, 2006; and

WHEREAS, one of the cited cases is *Pantelidis v. Board of Standards and Appeals*, 10 Misc. 3d 1077, 2005 WL 3722913 (2005) (hereinafter, “*Pantelidis I*”), a Supreme Court decision reviewing a Board action (the Board notes that this decision is currently being appealed); and

WHEREAS, this case arose not out of a vested rights determination, but out of a rejected variance application; and

WHEREAS, the *Pantelidis I* court held, in part, that for purposes of avoiding a finding that the hardship was self-created in the context of a variance application, a property owner may properly claim that there were expenditures made in good faith reliance upon a permit later ruled void on its face by the Board; and

WHEREAS, this decision does not address whether vested rights can be obtained based upon such good faith reliance; and

WHEREAS, in fact, the Board recognizes that the good faith reliance doctrine, which allows a variance to be predicated, in part, on reliance on an invalid permit, is an entirely separate construct from the common law vested rights doctrine, which requires a valid permit (see *Reichenbach*, 364 N.Y.S.2d at 294); and

WHEREAS, the applicant makes much of the fact that the *Pantelidis I* court uses the phrase “then-valid permit” liberally throughout the opinion, and that this phrase appeared to have been lifted from an earlier opinion of the First Department on a procedural matter related to the *Pantelidis* litigation, *Pantelidis v. Board of Standards and Appeals*, 13 AD3d 242 (1st Dep’t, 2004) (hereinafter, “*Pantelidis II*”); and

WHEREAS, though not entirely clear from the applicant’s oral or written statements, the argument appears to be that these two courts considered the permit revoked by the Board as contrary to zoning to be valid up until the point of revocation; and

WHEREAS, the Board is unconvinced that the *Pantelidis I* court was explicitly holding that permits are deemed to be valid until the time that either DOB or the Board determines that they were invalid when issued; and

WHEREAS, there is, in fact, nothing in the opinion to suggest that the *Pantelidis I* court was even reaching this question; the use of the phrase “then-valid permit” appears to be nothing more than an unfortunate choice of descriptive words; and

WHEREAS, in any event, as discussed above, the Board finds this argument untenable: if an approval and permit does not comply with applicable laws when issued, it is void on its

face, regardless of when DOB or this Board issues a determination as to its validity; and

WHEREAS, accordingly, the Supreme Court opinion in *Pantelidis I* does not support the applicant’s argument; and

WHEREAS, likewise, the *Pantelidis II* decision addresses the Supreme Court’s ability to hold a good faith reliance hearing as to the variance application where the Board did not; it does not establish that DOB, upon audit of a permit, is prohibited from revoking a permit or declaring it invalid when issued; and

WHEREAS, furthermore, the cases that the two *Pantelidis* courts cited when discussing the good-faith reliance doctrine do not use the phrase “then-valid”, nor do they hold that a finding of common law vesting may be obtained on a invalid permit; and

WHEREAS, the Board observes that in the seminal good faith reliance case, *Jayne Estates*, the Court of Appeals specifically referred to the permit at issue in that litigation as “invalid”, and noted that the good-faith reliance was on an “invalid permit”, not a “then-valid” permit; and

WHEREAS, finally, the Board notes that its revocation of the permit at issue in the *Pantelidis* litigation was upheld by the Supreme Court in an Article 78 proceeding that occurred prior to the *Pantelidis I* and *II* decisions; and

WHEREAS, specifically, in *Pantelidis v. BSA*, Index No. 110532/01 (filed January 10, 2002) (hereinafter, *Pantelidis III*), the court, when referring to the work proposed under the permit, stated that DOB had “impermissibly allowed” such construction and characterized DOB’s approval of the work “misplaced” (see *Pantelidis III* at 16); and

WHEREAS, the *Pantelidis III* court also noted that the construction under the permit was illegal, and chastised the party that obtained the permit for its attempt to “circumvent to the applicable ZR roadblocks and gain DOB approval” for the proposed construction (see *Pantelidis III* at 17); and

WHEREAS, the Board reads the *Pantelidis III* decision as affirmation that a permit that is void on its face because it fails to comply with the Zoning Resolution and/or Building Code is not valid for any purpose at any time; and

WHEREAS, in conclusion, after reviewing the three cited *Pantelidis* decisions, the Board finds that none of them support the applicant’s argument; and

WHEREAS, the June 11 submission also cites to *Lefrak Forest Hills Corp. v. Galvin*, 338 N.Y.S.2d 932 (1st Dep’t 1972), and states that the *Pantelidis I* court applied the holding of this case in support of a conclusion that it was applicable to both zoning and administrative appeals cases; and

WHEREAS, the Board notes, however, that *Lefrak* does not appear to be applied or even cited in *Pantelidis I*; and

WHEREAS, unfortunately, the applicant’s argument as to this point was not developed further in the June 11 submission; and

WHEREAS, in any event, the Board is aware of the *Lefrak* decision, and does not consider it relevant; there is no suggestion in the opinion that common law vested rights may be obtained without a valid permit; and

WHEREAS, the other cases cited by the applicant in the

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June 11 submission concern the substantial expenditures and construction aspect of the common law vested rights doctrine; and

WHEREAS, because none of the alleged expenditure and work relate to valid permits, the Board finds that consideration of the applicant's contentions as to the degree of expenditure and work needed to vest under the common law doctrine of vested rights is unnecessary; and

WHEREAS, based upon its review of the record and the considerations set forth above, the Board concludes as follows: (1) binding case law holds that vested rights can not accrue when the work was performed under an invalid permit; (2) DOB correctly determined that the Foundation Permit was invalid when obtained by the owner's filing professional through professional certification; and (3) since none of the purported expenditure was incurred or work was performed pursuant to a valid permit, the applicant has no vested right to continue construction on the Proposed Building, or on the adjacent building, since the Foundation Permit was for both.

Therefore it is Resolved that the subject appeal, requesting a Board determination that the owner of the subject premises has obtained the right to complete a proposed three-family, four-story building under the common law doctrine of vested rights, is hereby denied.

Adopted by the Board of Standards and Appeals, June 20, 2006.

360-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, Brooklyn, south side of 15th Street, 205' feet 5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deidre Carson.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar,

Commissioner Chin and Commissioner Collins.....4
THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a five-story residential building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 368-05-A, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006 and May 16, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 7, Concerned Citizens of Greenwood Heights, and South Slope Community Group, appeared in opposition to the application; and

WHEREAS, certain elected officials, including State Senator Velmanette Montgomery, State Assemblyman James Brennan and Public Advocate Betsy Gotbaum, also provided testimony in opposition to the application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the "opposition") opposed the granting of any relief to the applicant, for reasons discussed below; and

WHEREAS, the subject premises is located on the south side of 15th Street, 205'-5" west of the intersection of Eighth Avenue and 15th Street; and

WHEREAS, the subject lot is approximately 75 ft. wide by 100 ft. deep, with a total lot area of 7,656 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a five-story residential building with 16,743 sq. ft. of residential floor area (2.2 FAR), with a full cellar, and a first-floor parking garage (the "Building"); and

WHEREAS, the subject premises is currently located within an R6B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning bulk parameters; specifically, building height (55 ft. was permitted), setback (a setback was required at 45 ft.) and floor area (2.2 FAR was the maximum permitted); and

WHEREAS, however, on November 16, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with such

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parameters; and

WHEREAS, on July 8, 2005, the Department of Buildings issued a New Building permit (New Building Permit No. 301748777; hereinafter the "NB Permit") for the Building; and

WHEREAS, the validity of the NB Permit when issued has not been questioned and is not at issue in this appeal; and

WHEREAS, because the Building violated the provisions of the new R6B zoning district and work on the foundation was not completed as of the Enactment Date, the NB Permit lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on November 22, 2005 for the NB Permit; and

WHEREAS, the applicant now applies to the Board to reinstate the permits pursuant to ZR § 11-331; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, based upon its review of the evidence, the Board has determined that excavation was not completed; and

WHEREAS, the Board notes that due to litigation with the neighbor at 396 15th Street, the court issued a temporary restraining order on August 5, 2005, which halted all non-remedial excavation and construction within 15 ft. of the neighboring property; and

WHEREAS, based upon the record before it, the Board is unable to conclude that excavation for the proposed development was complete or would have been completed had there not been a stop work order; and

WHEREAS, as to substantial progress on the foundation,

the Board has only considered work completed as of the Enactment Date and excluded all remedial work ordered by DOB since that date; and

WHEREAS, the Board observes that while 39 percent of the total foundation costs have been expended for helical piles, shoring, and steel plates, a considerably smaller percentage of actual physical foundation work was completed; and

WHEREAS, specifically, the applicant represents that only 3.0 percent, or 2.5 tons out of a total of 73 tons, of rebar have been installed, and only 6 percent, or 58.5 cubic yards out of a total of 757 cubic yards, of concrete has been poured; and

WHEREAS, additionally, the Board notes that substantial progress has not been made on other primary elements of the foundation, including the reinforcement and concrete pouring; and

WHEREAS, again, based upon the record before it, the Board determines that substantial progress on the foundation was not completed; and

WHEREAS, accordingly, because excavation was not complete and substantial progress was not made on the foundation, the applicant is not entitled to relief pursuant to ZR § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the NB Permit; and

WHEREAS, accordingly, although the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under ZR § 11-331, this denial is not an impediment to the reinstatement of the permit made by the Board under BSA Cal. No. 368-05-A.

Therefore it is Resolved that this application to renew DOB Permit No. 301748777 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, June 20, 2006.

368-05-A

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, south side of 15th Street, 205'-5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

For Applicant: Deidre Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

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WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed development at the referenced premises; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 360-05-BZY (the "BZY Application"), decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006 and May 16, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 7, the Concerned Citizens of Greenwood Heights, and the South Park Slope Community Group appeared in opposition to the application; and

WHEREAS, certain elected officials, including State Senator Velmanette Montgomery, State Assemblyman James Brennan, and Public Advocate Betsy Gotbaum provided testimony in opposition to the application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the "opposition") opposed the granting of any relief to the applicant, for reasons discussed below; and

WHEREAS, the applicant states that the subject premises fronts on the south side of 15th Street between 7th and 8th Avenues, on a 7,656 sq. ft. lot, with frontage of approximately 75 ft. and a depth of 100 ft.; and

WHEREAS, the applicant proposes to develop the site with a five-story plus cellar residential building, with 7,035 sq. ft. of floor area (the "Building"); and

WHEREAS, the subject premises was formerly located within an R6 zoning district; and

WHEREAS, on November 16, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R6B; and

WHEREAS, the Building complied with the former R6 zoning district parameters as to floor area, setback and height; and

WHEREAS, however, because the site is now within an R6B district, the proposed development would not comply with these bulk parameters; and

WHEREAS, the applicant notes that the construction on the site was often constrained; and

WHEREAS, the applicant provided the following chronology of development on the site: (1) excavation commenced in May 2005; (2) during excavation, the owner discovered that the foundations of adjacent buildings were unstable and that soil conditions were worse than anticipated; (3) permits for construction were issued on July 8, 2005; (4)

the discovered foundation and soil problems resulted in the need to redesign the foundation for the Building; (5) the redesign included work that had to be performed on adjacent buildings, but one adjacent building owner did not consent; (6) this adjacent owner filed suit and the court issued a restraining order on August 5, 2005, preventing construction or excavation within 25 ft. of the adjacent owner's building; and (7) revised foundation plans under the construction permit, which addressed the soil conditions, were approved by DOB on October 4, 2005; and

WHEREAS, the applicant claims that construction was thus limited to certain portions of the site and that further delays arose out of the need to redesign the foundation; and

WHEREAS, the applicant contends that the owner was unable to ascertain the extent of soil and adjacent property conditions prior to commencement of construction; and

WHEREAS, the Board agrees that such construction difficulties are normal within the City; and

WHEREAS, however, the Board notes that the owner could have simply started construction sooner to avoid the impact that these problems may have had on the course of construction; and

WHEREAS, the Board finds that ensuring that work is done appropriately based on an assessment of the conditions on the site is a responsibility of the developer, even where it is difficult to assess how construction methods might need to be adjusted without first commencing construction; and

WHEREAS, thus, the Board bases its decision herein on the amount of work performed and expenditure made as of the Enactment Date, and is not granting any special exceptions in its analysis because the owner experienced construction difficulties; and

WHEREAS, the Board also notes in passing that work was performed at the site after the Enactment Date, but finds that the applicant conclusively established that this work was done with the express authorization of DOB, in furtherance of making the site safe; and

WHEREAS, notwithstanding the limited amount of time that construction was actually permitted, the applicant requests that the Board find that based upon the serious economic loss the owner would face if compelled to comply with the new zoning, the amount of work performed, and the amount of financial expenditures, including irrevocable commitments, the owner has a vested right to continue construction and finish construction of the Building; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, the applicant states that on July 8, 2005, a New Building permit (Permit No. 301748777; hereinafter, the "NB Permit") for the Building was issued by DOB; and

WHEREAS, the Board notes that the validity of the NB Permit was not questioned by the opposition or DOB; thus, it is not an issue in the instant application; and

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WHEREAS, assuming that a valid permit had been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where serious loss will result if the owner is denied the right to proceed under the prior zoning, and the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change; and

WHEREAS, specifically, as held in *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to the serious loss finding, the applicant contends that the loss of floor area that would result if vesting was not permitted is significant; and

WHEREAS, the applicant notes that the permissible Floor Area Ratio (FAR) would decrease from 2.2 FAR to 2.0 FAR, but more importantly, because of the requirement for a setback at 40 ft., and the maximum height of 50 ft., the rezoning would require the owner to eliminate one full floor of the Building as proposed, and eliminate two units on the fourth floor; and

WHEREAS, the applicant states that this would result in an approximately one-third reduction in sellable floor area; and

WHEREAS, during the course of the public hearing process, the Board asked for further amplification of the owner's projected serious loss; and

WHEREAS, the Board suggested that design changes to the Building, such as a reduction in the floor to ceiling heights or a dropping of the height of the ground floor (proposed at 22.5 ft. from floor to ceiling), could avoid the projected loss of floor area; and

WHEREAS, the applicant responded by noting that a reduction in the floor to ceiling heights throughout the Building would decrease the desirability and marketability of the units, and therefore overall projected revenue would still be diminished; and

WHEREAS, further, in a submission dated June 6, 2006, the applicant stated that the first floor was designed with the above-mentioned floor to ceiling height, and was raised 4'-2" above grade level, in order to provide more marketable ground floor residential space, with windows that would look out above eye-level on the sidewalk; and

WHEREAS, further, this design allowed for a portion of the cellar to be above grade, which permits cellar

windows; and

WHEREAS, the applicant states that if the ground floor were dropped 4.5 ft. into the cellar space in order to reduce the height of the building, the double-height area of the first floor would be reduced so that windows would be lowered to pedestrian eye-level, and the cellar height would be reduced so that no windows could be provided; and

WHEREAS, the applicant submitted a statement from a real estate broker, opining that such a redesign would diminish revenue from the ground floor unit from 600 to 450 dollars per sq. ft.; and

WHEREAS, the applicant also provided a detailed chart in the June 6 submission, outlining what hard and soft costs already incurred would be impossible to recoup if the Building had to comply with the new R6 zoning; and

WHEREAS, this chart sets forth both the dollar amount and the justification for the conclusion that the costs would be wasted; and

WHEREAS, the applicant states that \$577,492 of costs would be wasted if the Building is required to comply with the new zoning; and

WHEREAS, the Board agrees that a diminution in the value of units within the building because of the need to redesign coupled with \$577,492 of wasted costs constitutes a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, as a point of clarification, the Board notes that the instant application is not one for a variance based on hardship, but is rather an application for a finding that the owner has obtained a vested right to continue construction; and

WHEREAS, the vested rights doctrine is rooted in the 14th Amendment of the Constitution of the United States, and its application to construction in New York State has been guided and shaped by the courts; and

WHEREAS, unlike a variance, no showing of uniqueness is required, nor is the self-created hardship doctrine applicable; and

WHEREAS, further, the serious loss standard is not the same as the unnecessary hardship standard: the applicant does not have to show that no reasonable return could be gained from a development that complies with the new zoning; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant's discussion of the diminution in income that would occur if the FAR, height and setback limitations of the new zoning were imposed; and

WHEREAS, as to substantial construction, the applicant states that the owner has completed demolition, land clearing and excavation; and

WHEREAS, the applicant also states that the owner has installed 164 out of the 200 required helical pile for underpinning, all of the required shoring, and one of the two necessary support walls for adjacent buildings; and

WHEREAS, in support of this statement, the applicant has submitted pictures, invoices for construction materials and labors, and plans reflecting the degree of underpinning

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and wall work completed; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of the representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board's conclusion is based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts; and

WHEREAS, specifically, the Board has reviewed the cases cited in the applicant's December 21, 2005 submission, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that the owner has already expended or become obligated for the expenditure of \$3.45 million of a \$7 million project; and

WHEREAS, however, the Board notes that these totals include the purchase price; and

WHEREAS, the applicant states that this cost may properly be included in an analysis of expenditure; and

WHEREAS, the Board agrees that there is no impediment to consideration of such a cost, but also notes that it is not required; and

WHEREAS, the Board has not analyzed purchase price in its past consideration of vested rights cases, and declines to do so here; and

WHEREAS, while it is reasonable to conclude that a purchase price is based upon the zoning in effect at the time of the purchase, the Board notes that this is not always the case, and further observes that not all transactions are recent or arms-length; and

WHEREAS, thus, the Board finds that the relevance of this cost may be difficult to ascertain in many circumstances; and

WHEREAS, the Board concludes that it better to assess expenditure in light of total development costs absent the purchase price; and

WHEREAS, here, the stated acquisition price is \$2.2 million; subtracting this amount from both the expenditure total and the development costs means that the owner expended or committed approximately \$1.25 million out of \$4.8 million (or approximately 26 percent); and

WHEREAS, the applicant states that other expenses relate to excavation, foundation work, architectural and engineering fees, insurance and filing fees, taxes, surveying costs, and a small amount of miscellaneous costs, among other items; and

WHEREAS, furthermore, as to actual construction costs related to foundation construction, the Board observes that the applicant has spent approximately \$381,000 out of the expected

total cost of \$780,000, as illustrated in a chart provided in the applicant's initial submission; and

WHEREAS, as proof of the expenditures, the applicant has submitted an affidavit from the owner, bank statements, invoices for excavation and foundation work, checks and invoices for the other professional work, and proof of payment for the other items; and

WHEREAS, the Board considers the amount of expenditure and irrevocable commitments significant, both in of itself for a project of this size, and when compared against the development costs (minus the purchase price); and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under the prior zoning; and

WHEREAS, in sum, the Board has reviewed the representations as to serious loss, the work performed, and the expenditures made, and the supporting documentation for such representations, and agrees that that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date; and

WHEREAS, the opposition expressed concerns about various aspects of this application; and

WHEREAS, specifically, the opposition contended: (1) that the foundation was not complete; (2) that the percentage of foundation work was not sufficient to sustain a positive vesting determination; (3) that work was done illegally after-hours or in an unsafe manner; (4) that there were DOB violations issued that resulted in stop-work orders; and (5) that the purchase price was excessive and would skew the analysis if folded in; and

WHEREAS, the Board notes that there is no requirement under the common law of vested rights that the foundation for the development under consideration be completed; and

WHEREAS, as to the progress on foundations, the Board reiterates that the degree of construction at the site was substantial enough to meet the guideposts established by case law for such a finding; and

WHEREAS, as to impermissible work, the Board observes that no evidence of impermissible after-hours or weekend work was submitted into the record; and

WHEREAS, DOB's Building Information System records for the subject premises indicates that only one of the numerous complaints lodged with DOB from May 2005 (commencement of excavation) to November 16, 2005 (the date of the rezoning) was for after-hours work, and that this complaint was inspected, no work was observed, and no violation was issued; and

WHEREAS, as to the stop-work order contention, the Board notes that the only stop-work order issued by DOB was issued after the Enactment Date, because the zoning had changed; and

WHEREAS, finally, any concern that the owner overpaid for the site is rendered moot by the Board's removal of acquisition costs from the considered expenditures; and

WHEREAS, the Board understands that the community

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and the elected officials worked diligently on the Park Slope South rezoning and that the Building does not comply with the new R6B zoning parameters; and

WHEREAS, however, the applicant has met the test for a common law vested rights determination, and the Board has determined that the equities in this case, given the established serious loss, and the degree of work performed and expenditures made, weigh in the favor of the owner; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant and the opposition as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested reinstatement of the NB Permit, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 301748777, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 20, 2006.

362-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th LLC, owner.

SUBJECT – Application December 16, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a six story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, Brooklyn, east side of Sixth Avenue 128'2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

THE RESOLUTION –

WHEREAS, this is an application under Z.R. § 11-331, to renew a building permit and extend the time for the completion of foundation for a six-story residential building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 367-05-A, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application

on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006, May 16, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, certain neighbors and community groups, including Community Board 7, Concerned Citizens of Greenwood Heights, and South Slope Community Group, appeared in opposition to the application; and

WHEREAS, certain elected officials, including City Council Member Sara Gonzalez, State Senator Velmanette Montgomery, State Assemblyman James Brennan, and Public Advocate Betsy Gotbaum, provided testimony in opposition to the application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the “opposition”) opposed the granting of any relief to the applicant, for reasons discussed below; and

WHEREAS, the applicant states that the subject premises fronts on Sixth Avenue between 19th Street and the cut for the Prospect Expressway, on a 2,380 sq. ft. lot, with frontage of 34 ft. and a depth of 70 ft.; and

WHEREAS, the applicant proposes to develop the site with a six-story residential building, with 7,035 sq. ft. of floor area (the “Building”); and

WHEREAS, the subject premises is currently located within an R6B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically, building height (55 ft. was permitted), setback (a setback was required at 45 ft.) and floor area (2.2 FAR was the maximum permitted); and

WHEREAS, however, on November 16, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R6B; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with such parameters; and

WHEREAS, the applicant states that on September 9, 2005, a New Building permit (Permit No. 301964765; hereinafter, the “NB Permit”) for the proposed development was issued by the Department of Buildings; and

WHEREAS, the Board notes that DOB conducted an audit of the NB Permit, and concluded, after reviewing a response to the audit from the applicant, that it should not be revoked; and

WHEREAS, because the Building violated the provisions of the R6B zoning district and work on foundations was not completed at the Enactment Date, the NB Permit lapsed by operation of law; and

WHEREAS, the applicant now applies to the Board to reinstate the NB Permit pursuant to Z.R. § 11-331; and

WHEREAS, Z.R. § 11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person

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with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, as to the excavation, the applicant asserts that excavation was not completed due to the need to underpin the adjacent building and a subsequent stop work order from DOB; and

WHEREAS, additionally the applicant asserts that excavation could have been completed between when the permit was issued and the October 26, 2005 stop work order, but was practically and legally precluded from doing a full excavation due to: (1) the need to maintain a ramp in the site for further soil removal, and (2) the Owner’s obligation to continue to maintain support for the adjacent property while underpinning progressed; and

WHEREAS, the Board is not persuaded by the assertion that the need to underpin the adjacent building and the stop work orders are extraordinary conditions that prevented the completion of the excavation; and

WHEREAS, the Board notes that the need to underpin adjacent buildings is common in such construction and excavation can be completed after the circumstances leading to interruption of work are remedied; and

WHEREAS, further, based upon its review of photographs submitted by the applicant, the Board observes that a significant portion of the site remains un-excavated; and

WHEREAS, accordingly, the Board finds that excavation for the proposed development was not complete; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that 21 percent of the concrete has been poured as part of the underpinning, which is 60 percent complete, but that no foundation walls or shoring have been completed and no gunnite has been installed; and

WHEREAS, the applicant states further that the foundation work amounts to \$36,000, or 13 percent, of the \$269,000 total foundation costs; and

WHEREAS, in support of these statements, the applicant has submitted photographs and charts indicating the amount of work completed; and

WHEREAS, after review of the evidence, the Board determines that substantial progress on the foundation was not completed; and

WHEREAS, accordingly, because excavation was not complete and substantial progress was not made on the foundation, the applicant is not entitled to relief under Z.R. § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the New Building permit; and

WHEREAS, accordingly, although the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under Z.R. § 11-331, this denial is not an impediment to the reinstatement of the permit made by the Board under BSA Cal. No. 367-05-A.

Therefore it is Resolved that this application to renew DOB Permit No. 301964765 pursuant to Z.R. § 11-331 is denied.

Adopted by the Board of Standards and Appeals, June 20, 2006.

367-05-A

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th Avenue, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, east side of Sixth Avenue, 128'-2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed development at the referenced premises; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 362-05-BZY (the “BZY Application”), decided the date hereof, which is a

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request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to Z.R. § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006 and May 16, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, certain neighbors and community groups, including Community Board 7, Concerned Citizens of Greenwood Heights, and South Slope Community Group appeared in opposition to the application; and

WHEREAS, certain elected officials, including City Council Member Sara Gonzalez, State Senator Velmanette Montgomery, State Assemblyman James Brennan, and Public Advocate Betsy Gotbaum provided testimony in opposition to the application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the "opposition") opposed the granting of any relief to the applicant, for reasons discussed below; and

WHEREAS, the applicant states that the subject premises fronts on Sixth Avenue between 19th Street and the cut for the Prospect Expressway, on a 2,380 sq. ft. lot, with frontage of 34 ft. and a depth of 70 ft.; and

WHEREAS, the applicant proposes to develop the site with a six-story residential building, with 7,035 sq. ft. of floor area (the "Building"); and

WHEREAS, the subject premises was formerly located within an R6 zoning district; and

WHEREAS, on November 16, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R6B; and

WHEREAS, the Building complied with the former R6 zoning district parameters as to floor area, setback and height; and

WHEREAS, however, because the site is now within an R6B district, the proposed development would not comply with these bulk parameters; and

WHEREAS, the applicant notes that the construction on the site was often constrained by DOB action; and

WHEREAS, the applicant provided the following chronology of development on the site: (1) demolition occurred in July 2005; (2) DOB issued a violation with a stop-work order on July 27 for failure to post a permit and for excavation without a permit; (3) the building permit for construction of the Building was issued on August 24; (4) the stop work order was lifted, because there was no illegal excavation; instead, demolition had revealed a pre-existing cellar; (5) on September 20, 2005, DOB issued another stop-work order, due to the fact that the professional retained by the owner to perform controlled inspections resigned from the

job; (6) the September 20 stop-work order was lifted when a new professional was retained; (7) actual excavation commenced on October 9; (8) underpinning concrete was poured on October 23; and (8) a third stop-work order was issued by DOB on October 26, for failure to provide protection at the sides of excavation; and

WHEREAS, thus, the applicant concludes there was a small window of time where actual excavation and foundation work was performed; and

WHEREAS, the applicant contends that the owner was unable to ascertain the extent of necessary underpinning prior to commencing demolition and excavation; and

WHEREAS, the Board agrees that such construction difficulties are normal with the City; and

WHEREAS, however, the Board notes that the applicant does not allege that DOB acted improperly; thus, the Board does not impute any significance to the fact that the developer often could not work on the site due to DOB's enforcement actions; and

WHEREAS, ensuring that work proceeds in a manner that will not cause DOB to stop work is a responsibility of the developer, even where it is difficult to assess how construction methods might need to be adjusted without first commencing construction; and

WHEREAS, thus, the Board bases its decision herein on the amount of work performed and expenditure made as of the Enactment Date, and is not granting any special exceptions in its analysis because the owner experienced construction difficulties; and

WHEREAS, notwithstanding the limited amount of time that construction was actually permitted, the applicant requests that the Board find that based upon the serious economic loss the owner would face if compelled to comply with the new zoning, the amount of work performed, and the amount of financial expenditures, including irrevocable commitments, the owner has a vested right to continue construction and finish construction of the Building; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, the applicant states that on August 24, 2005, a New Building permit (Permit No. 301970758; hereinafter, the "NB Permit") for the Building was issued by DOB; and

WHEREAS, the Board notes that DOB conducted an audit of the NB Permit, and concluded, after reviewing a response to the audit from the applicant, that it should not be revoked; and

WHEREAS, DOB then sent a rescission of its intent to revoke the NB Permit to the owner and the filing professional on June 1, 2006, stating that the revocation was not necessary; and

WHEREAS, assuming that a valid permit had been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where serious loss will result if the owner is denied the

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right to proceed under the prior zoning, and the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change; and

WHEREAS, specifically, as held in *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to the serious loss that the owner would incur if required to construct the building under the current zoning, the applicant states that the loss of floor area that would result if vesting was not permitted (from a Floor Area Ratio of 3.0 to 2.0) would lead to the elimination of the Building's top two floors and the units thereon, which are the most profitable in terms of sales price; and

WHEREAS, in support of this representation, the applicant submitted an offering plan schedule, which shows the total initial offering prices for the proposed units, and the individual prices of the top floor units; and

WHEREAS, the applicant also submitted an affidavit that establishes that the total construction costs needed to complete the Building exceed the projected revenue from a 2.0 FAR building; and

WHEREAS, at the request of the Board, the applicant provided further detail of the serious loss in a submission dated June 7, 2006; and

WHEREAS, in the June 7 submission, the applicant states that a reduction of 1.0 FAR would result in a loss of 1,856 sq. ft. of sellable floor area, and a loss in revenue of \$1.33 million (based on the offering plan); and

WHEREAS, the applicant further states that while hard costs would be reduced by approximately \$420,000, soft costs would increase by approximately \$207,000 because the Building would have to be redesigned; and

WHEREAS, the applicant concludes that a 2.0 FAR building would result in a loss; and

WHEREAS, the Board agrees that a one-third reduction in salable floor area will result in a serious economic loss, and that the supplemental data submitted by the applicant supports this conclusion; and

WHEREAS, as a point of clarification, the Board notes that the instant application is not one for a variance based on hardship, but is rather an application for a finding that the owner has obtained a vested right to continue construction; and

WHEREAS, the vested rights doctrine is rooted in the 14th Amendment of the Constitution of the United States, and its

application to construction in New York State has been guided and shaped by the courts; and

WHEREAS, unlike a variance, no showing of uniqueness is required, nor is the self-created hardship doctrine applicable; and

WHEREAS, further, the serious loss standard is not the same as the unnecessary hardship standard: the applicant does not have to show that no reasonable return could be gained from a development that complies with the new zoning; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant's discussion of the diminution in income that would occur if the FAR, height and setback limitations of the new zoning were imposed; and

WHEREAS, as to substantial construction, the applicant states that the owner has completed demolition, land clearing and excavation; and

WHEREAS, the applicant also states that underpinning has been constructed around 50 percent of the site, and 90 cubic yards of concrete (or 21 percent of the concrete required for the underpinning) has been poured; and

WHEREAS, in support of this statement, the applicant has submitted pictures, invoices for concrete pours, and plans reflecting the degree of underpinning completed; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of the representations, and agrees that it establishes that the substantial work was performed; and

WHEREAS, the Board's conclusion is based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts; and

WHEREAS, specifically, the Board has reviewed the cases cited in the applicant's December 21, 2005 submission, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to, or in excess of, the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that the owner has already expended or become obligated for the expenditure of \$1.47 million of a \$3.24 million project; and

WHEREAS, however, the Board notes that these totals include the purchase price; and

WHEREAS, the applicant states that the purchase price may properly be included in an analysis of expenditure, and, in its May 10, 2006 submission, cites to cases where courts permitted such costs to be part of the analysis; and

WHEREAS, the Board agrees that there is no impediment to consideration of such a cost, but also notes that it is not

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required; and

WHEREAS, the Board has not analyzed purchase price in its past consideration of vested rights cases, and declines to do so here; and

WHEREAS, while it is reasonable to conclude that a purchase price is based upon the zoning in effect at the time of the purchase, the Board notes that this is not always the case, and further observes that not all transactions are recent or arms-length; and

WHEREAS, thus, the Board finds that the relevance of purchase price may be difficult to ascertain in many circumstances; and

WHEREAS, the Board concludes that it better to assess expenditure in light of total development costs absent purchase price; and

WHEREAS, here, the stated acquisition price is \$800,000; subtracting this amount from both the expenditure total and the development costs means that the owner expended approximately \$470,000 out of \$2.44 million (or approximately 19 percent); and

WHEREAS, the applicant states that other expenses relate to excavation, foundation work, architectural and engineering fees, insurance and filing fees, taxes, surveying costs, and a small amount of miscellaneous costs; and

WHEREAS, as proof of the expenditures, the applicant has submitted an affidavit from the owner, bank statements, invoices for excavation and foundation work, checks and invoices for the other professional work, and proof of payment for the other items; and

WHEREAS, the Board considers the amount of expenditure significant, both in of itself for a project of this size, and when compared against the development costs 9minus the purchase price); and

WHEREAS, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under the prior zoning; and

WHEREAS, in sum, the Board has reviewed the representations as to serious loss, the work performed, and the expenditures made, and the supporting documentation for such representations, and agrees that that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date; and

WHEREAS, the opposition expressed concerns about various aspects of this application; and

WHEREAS, specifically, the opposition contended: (1) that construction proceeded in an unsafe manner, causing damage to the neighboring properties and that the owner should not be rewarded for unsafe work; (2) that some of the work was performed illegally; (3) that the property value in the immediate area had significantly risen such that a complying development was now feasible, and that to the extent it was not, it was due to the owner's alleged poor real estate investment skills; and (4) that the purchase price was excessive and would skew the analysis if folded in; and

WHEREAS, the Board notes that while violations and stop-work orders were issued during the course of foundation

construction, only the last of the stop-work orders (issued on October 26, 2005) identified a failure to provide protection at side of excavation; the other stop work orders addressed permitting or controlled inspection issues; and

WHEREAS, the Board further notes that the first two stop-work orders were lifted when the alleged problems were either confirmed as erroneous or when they were remedied; and

WHEREAS, finally, the Board notes that the applicant represents that no work occurred when a stop-work order was in effect, and that no evidence to the contrary has been submitted into the record; and

WHEREAS, likewise, no evidence of impermissible after-hours or weekend work was submitted into the record; and

WHEREAS, while the opposition stated that complaints about such work were lodged with the City, DOB's Building Information System records for the subject premises does not corroborate this; in fact, none of the seven complaints lodged in 2005 against the premises were for after-hours work; and

WHEREAS, the Board, the members of which have considerable experience in construction-related matters, understands that development often proceeds in an unanticipated manner, and that construction violations may be issued even where there is no bad faith on the part of the developer; and

WHEREAS, while the Board agrees with the opposition that certain of the issued violations are serious, this does not lead to the conclusion that the owner is not entitled to a common law vested rights determination if a showing for such a determination is made; and

WHEREAS, as to increase in the value of the site, the Board notes that no firm evidence of such an increase was presented; and

WHEREAS, however, even assuming that the site did increase in value, the Board finds that this would not affect its conclusion about the owner's serious harm argument as the value of the proposed units would also likely increase; and

WHEREAS, consequently, the reduction in sellable FAR would have an even greater impact than as suggested by the applicant; and

WHEREAS, the Board also agrees with the applicant that the owner is not a position to recoup the purchase price and the costs of development, both hard and soft, from sale of the property as is, given the current condition of the site and the inherent problems related to its development; and

WHEREAS, as to the owner's alleged lack of skill in real estate development, the Board notes that no vested rights case that it is aware of holds that an owner's ability to obtain vested rights is negated or modified by his or her degree of expertise; and

WHEREAS, if anything, the slow pace of development and the compliance with the stop-work orders, indicates that the owner proceeded in good faith even as the date of the potential City Council approval of the rezoning approached; and

WHEREAS, moreover, any concern that the owner overpaid for the site is rendered moot by the Board's removal

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of purchase price from the considered expenditures; and

WHEREAS, the Board understands that the community and the elected officials worked diligently on the Park Slope South rezoning and that the Building does not comply with the new R6B zoning parameters; and

WHEREAS, however, the applicant has met the test for a common law vested rights determination, and the Board has determined that the equities in this case, given the established serious loss, and the degree of work performed and expenditures made, weigh in the favor of the owner; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant and opposition as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested reinstatement of the NB Permit, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 301964765, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 20, 2006.

8-06-A & 9-06-A

APPLICANT – Victor K. Han, for Kim Dong Ouk, owner.
SUBJECT – Application January 11, 2006 – Proposed construction of a two family semi-detached dwelling located within the bed of a mapped street which is contrary to Section 35 of the General City Law, Block 5380, Lot 49, Borough of Queens.

PREMISES AFFECTED –

42-32 149th Place, West side of 149th Place, 255' N/W of Beech Avenue, Block 5380, Lot 49, Borough of Queens.

42-34 149th Place, West side of 149th Place, 255' N/W of Beech Avenue, Block 5380, Lot 50, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Victor Han.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 9, 2006, acting on Department of Buildings Application Nos. 402265035 and 402265026 which reads, in pertinent part:

“Proposed new building w/accessory detached garage in a bed of a mapped street, contrary to Section 35 of

the General City Law of New York. Board of Standards and Appeals grant is required.”; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated March 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 17, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 25, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 9, 2006, acting on Department of Buildings Application Nos. 402265035 and 402265026, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 16, 2006”–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2006.

89-06-A

APPLICANT – Gary Lenhart, R.A., for the The Breezy Point Cooperative, owner; Noreen & Vincent Reilly, lessees.

SUBJECT – Application May 9, 2006 – Proposal to permit reconstruction and enlargement of an existing single family dwelling not fronting a mapped street is contrary to Section 36, Article 3 of the General City Law. Premises is located within the R-4 Zoning District.

PREMISES AFFECTED – 19 Beach 220th Street, 89.37, north of 4th Avenue, Block 16350, Lot 400, Rockaway Point, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 9, 2006, acting on Department of Buildings Application No. 402215955 which reads, in pertinent part:

“The street giving access to the proposed building is not placed on the official map of the City of New York, therefore:

- A) Certificate of Occupancy may not be issued as per Article 3 Section 36 of the General City Law, and
- B) Existing dwelling to be altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space, and, therefore, is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in the *City Record*, closed and voted on same date; and

WHEREAS, by letter dated May 17, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, May 9, 2006, acting on Department of Buildings Application Nos. 402215955, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 9, 2006”–(1)sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2006.

263-03-A

APPLICANT – John W. Carroll, Wolfson & Carroll, for Ben

Bobker, owner.

SUBJECT – Application August 20, 2003 – An administrative appeal challenging the Department of Buildings’ final determination dated August 13, 2003, in which the Department refused to revoke the certificate of occupancy, on the basis that the applicant had satisfied all objections regarding said premises.

PREMISES AFFECTED – 1638 Eighth Avenue, west side, 110-5’ east of Prospect Avenue, Block 1112, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: John Carroll.

For Opposition: Deirdra Carson.

For Administration: Amanda Derr, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

231-04-A

APPLICANT – Joseph P. Morsellino, Esq., for Chris Babatsikos and Andrew Babatsikos, owners.

SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243rd Street, Block 8103, Lot 5, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Joseph Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for decision, hearing closed.

355-05-BZY

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue, Block 869, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Aaron Brashear.

For Administration: Angelina Martinez-Rubio, Department of

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Buildings.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

356-05-A & 357-05-A

APPLICANT – The Law Office of Fredrick A. Becker, for Structures LLC, owner.

SUBJECT – Application December 14, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning. New zoning district is R3X as of September 15, 2005.

PREMISES AFFECTED – 150 and 152 Beach 4th Street a/k/a 1-70 Beach 4th Street, south of Seagirt Avenue, Block 15607, Lot 62 and 63, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra Altman, Michael Stern, Matt Probkwitz and Danny Krimsky.

For Opposition: Fran Tuccio, Susan Wagner, Donovan Richards, Tracy A. Conroy and Nathan Colen.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

361-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: John Carroll.

For Administration: Amanda Derr, Department of Buildings.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

366-05-A

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on

8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

For Applicant: Deirdre Carson.

For Opposition: John Carroll.

For Administration: Amanda Derr, Department of Buildings.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 12:15 P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 20, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Chin and Commissioner Collins.

ZONING CALENDAR

14-05-BZ

CEQR #05-BSA-087M

APPLICANT – The Law Office of Fred Becker, Esq. for Resorts 56 Inc. dba as Spa Ja, lessee; 8th and 56th Street Associates, owner.

SUBJECT – Application January 26, 2005 – under Z.R. § 73-36 to allow a physical Culture establishment on second and third floor of a three story commercial building. Premises is located within the C6-4 (CL) zoning district.

PREMISES AFFECTED – 300 West 56th Street, southwest corner of West 56th and 8th Avenue, Block 1046, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 11, 2006, acting on Department of Buildings Application No. 104063656, reads, in pertinent part:

“Proposed physical culture establishment is not permitted as-of-right in C6-4 District (ZR 32-00).”;
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C6-4 (CL) zoning district, the

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legalization of a physical culture establishment (“PCE”) located on the second and third floors of an existing three-story commercial building, contrary to Z.R. § 32-00; and

WHEREAS, a public hearing was held on this application on June 6, 2006, after due notice by publication in *The City Record*, and then to decision on June 20, 2006; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the conditions set forth below; and

WHEREAS, the applicant operates the facility as a spa, doing business under the name Spa Ja; and

WHEREAS, the premises is located on West 56th Street at the southwest corner with Eighth Avenue, and has a lot area of 2,550 sq. ft.; and

WHEREAS, the PCE occupies 1,162 sq. ft. on the first floor and 1,162 sq. ft. on the second floor; and

WHEREAS, the applicant represents that the PCE provides massages and facials performed by licensed professionals; and

WHEREAS, the PCE operates during the following hours: 9:00 a.m. to 9:00 p.m., Monday-Saturday and 10:00 a.m. to 7:00 p.m., Sunday; and

WHEREAS, at hearing, the Board asked the applicant if a second means of egress could be provided; and

WHEREAS, the applicant represents that because each floor is less than 1,200 sq. ft., a second means of egress is not required; and

WHEREAS, the Board also asked the applicant to confirm that signage complies with district regulations; and

WHEREAS, in response, the applicant submitted an analysis indicating that the signage is compliant with district regulations; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to Z.R. §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

Assessment Statement, CEQR No. 05-BSA-87M, dated January 27, 2005, and

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03, to permit, within a C6-4 (CL) zoning district, the legalization of a physical culture establishment located on the first and second floors of an existing three-story commercial building, contrary to Z.R. § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 8, 2006”–(3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on June 20, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 9:00 a.m. to 9:00 p.m., Monday-Saturday and 10:00 a.m. to 7:00 p.m., Sunday;

THAT all massages shall be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the certificate of occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all signage shall comply with regulations applicable in C6-4 zoning districts;

THAT all fire protection measures, including, but not limited to, area smoke detectors, manual pull stations at each exit, local audible and visual alarms and connection to a FDNY - approved central station, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

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THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2006.

52-05-BZ

CEQR #05-BSA-104K

APPLICANT – Sheldon Lobel, P.C., for Coptic Orthodox Church of St. George, owner.

SUBJECT – Application March 4, 2005 – under Z.R. § 72-21 proposed development of a six-story and cellar building, with community use on floors one through three, residential use on floors three through six, and with parking in the cellar, located in a C1-2 within an R5 zoning district.

PREMISES AFFECTED – 6209 11th Avenue, northeast corner of 63rd Street, Block 5731, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

Adopted by the Board of Standards and Appeals, June 20, 2006.

89-05-BZ

CEQR #05-BSA-120K

APPLICANT – Stadtmauer Bailkin, LLP (Steven M. Sinacori, Esq.) for 18 Heyward Realty, Inc., owner.

SUBJECT – Application April 12, 2005 – under Z.R. § 72-21 to allow an enlargement of the rear portion of an existing five-story community facility/commercial building; site is located in an R6 district; contrary to Z.R. § 24-11, § 24-37 and § 24-33.

PREMISES AFFECTED – 18 Heyward Street, Heyward Street, between Bedford and Wythe Avenues, Block 2230, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 14, 2005, acting on Department of Buildings Application No. 301908988, reads, in pertinent part:

“Proposed floor area is contrary to Zoning Resolution Section 24-11.

Proposed rear yard is contrary to Zoning Resolution Section 24-37 and 24-33.”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a site within an R6 zoning district, a proposed enlargement to the fourth and fifth floors of an existing five-story community facility building, which is contrary to Z.R. §§ 24-11 and 24-37; and

WHEREAS, the community facility space, which comprises most of the building, will be occupied by the Omni Rehabilitation Center, with an existing non-conforming office use remaining on the third floor; and

WHEREAS, the applicant proposes to construct a two-story enlargement of 1,980 sq. ft., resulting in a new total floor area of 18,931 sq. ft. (18,887 sq. ft. is the maximum permitted), a Floor Area Ratio (FAR) of 4.83 (4.8 is the maximum permitted), and a rear setback of ten ft. at 47’-3 ¾” (a setback at 23’-0” is required); and

WHEREAS, the applicant initially proposed to construct an enlargement that would have squared off the fourth and fifth floors, resulting in full lot coverage and no rear setback; and

WHEREAS, one of the neighbors appeared in opposition to this proposal, citing concerns about the negative impact it would have on its light and air; and

WHEREAS, the applicant responded to these concerns by submitting the current version, which includes a 10 ft. rear setback, as described above; and

WHEREAS, after the applicant modified plans to include this setback, the neighbor did not make any further submissions; and

WHEREAS, a public hearing was held on this application on February 14, 2006, after due notice by publication in the *City Record*, with continued hearings on April 11, 2006 and June 6, 2006 and then to decision on June 20, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of the application; and

WHEREAS, additionally, City Council Member David Yassky recommends approval of the application; and

WHEREAS, the subject premises is located on Heyward Street between Bedford and Franklin Avenues; and

WHEREAS, the lot has a total area of 3,914.37 sq. ft., and is irregularly-shaped, with 67’-0” of frontage and a depth reaching 75’-9” on its east lot line and 61’-6” on its west lot line; and

WHEREAS, the site is currently improved upon with a five-story community facility building, which occupies the entire area of the lot and which is adjacent to the rear lot line on the first through third floors; and

WHEREAS, because the first through third floors were erected prior to 1961, the rear yard encroachment at these levels is a legal noncompliance; and

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WHEREAS, the fourth and fifth floors were built as-of-right in 2003-2004, and have complying 22-ft. rear yard setbacks; and

WHEREAS, the applicant proposes to add additional floor area at the rear of the building by enlarging the fourth floor to full lot coverage and enlarging the fifth floor while maintaining a ten-ft. rear setback; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site has a shallow depth and is irregularly-shaped; and (2) the existence of the non-conforming three-story manufacturing building on the zoning lot; and

WHEREAS, as to uniqueness, the applicant states that the lot is irregularly-shaped, with a variation in depth from 61'-6" to 75'-9" and a variation in width from 57'-10½" to 58'-9½"; and

WHEREAS, the applicant submitted a 400-ft. radius diagram that demonstrates that of the 133 sites within the radius, only approximately 13 others are irregularly-shaped, and that only one or two other lots in the entire radius are as shallow as the subject lot; and

WHEREAS, the diagram further demonstrates that the 3,914.37 sq. ft. lot is one of the smaller lots within the radius; and

WHEREAS, the Board agrees that the irregular shape coupled with the relatively small size is a unique physical condition that leads to a hardship; and

WHEREAS, specifically, the Board notes that as a result of the site conditions, the site is under-developed, with the original three-story development built to 3.0 FAR for its prior manufacturing use, while the permitted community facility FAR is 4.8; and

WHEREAS, the applicant asserts that the existing position of the core and elevator in the center of the floor plates, as developed for the original three-story manufacturing building, is a further contributing factor to the unique physical conditions; and

WHEREAS, the Board agrees that this inefficient core design creates additional uniqueness and results in an under-built site despite full lot coverage; and

WHEREAS, the Board notes that the small floor plates and location of the core and elevator compromise the efficiency and usage of the floor plates and depresses the revenue of the existing two-story enlargement, built as-of-right; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, initially, the applicant provided a financial analysis for the existing conforming community facility use; and

WHEREAS, the applicant concluded that the conforming scenario would not result in a reasonable return, due to reduced revenue because of the inefficient floor plates and the other above-stated unique physical conditions; and

WHEREAS, the Board had several concerns about the

initial financial analysis and identified them at hearing; and

WHEREAS, specifically, the Board questioned the alleged constraints of the original three-story building and its potential income and rate of return without the 2003-2004 as-of-right enlargement, because community facility use on the lower three floors, pre- and post-enlargement, did not appear to be constrained; and

WHEREAS, in response, the applicant submitted a revised feasibility study that included development costs for a conversion of the original three-story structure to community facility use, and established that this would not realize a reasonable return; and

WHEREAS, the Board also asked the applicant to analyze the cost differences between a conversion of the original three-story building to community facility use and the development of the original structure with the fourth and fifth floors; and

WHEREAS, the applicant represents that the cost, for the three-story conversion, submitted in figures adjusted for inflation, would have been \$1,069,000 and the cost for the 2003-2004 enlargement was \$1,617,000; and

WHEREAS, the Board asked the applicant to describe the methodology used in determining the acquisition value, because the prior analyses set forth two acquisition values and the standard measure is fair market; and

WHEREAS, the applicant responded that the proposed scheme includes the estimated value of the original three-story building plus the costs of the conversion of the structure and the costs for the 2003-2004 enlargement; and

WHEREAS, based upon its review of the subsequent submissions of the applicant, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant asserts that the neighborhood is characterized by three to six-story residential apartment buildings and two to four-story warehouses and community facilities; and

WHEREAS, the applicant submitted photographs and both a 400-ft. and 500-ft. radius diagram to support this assertion; and

WHEREAS, in addition, the applicant modified the original plans to include a ten-foot setback above the fourth floor in response to next door neighbors' concerns about light and air; and

WHEREAS, a community facility located to the rear of the site submitted its support of the current proposal, noting that it believed that the proposed enlargement would not have a negative impact on its access to light and air; and

WHEREAS, the current version of the proposal also reflects the resultant reduction in floor area, due to the smaller

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fifth-floor enlargement; and

WHEREAS, the Board notes that the current proposal minimizes the impact on adjacent neighbors; and

WHEREAS, the Board further notes that the total building height will be maintained; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as stated above, the Board does not regard the retention of the existing building to be a self-created hardship; and

WHEREAS, in addition to the analyses of the conforming scenarios, the applicant also analyzed the proposal and concluded that it would realize a minimal return sufficient to overcome the site's inherent hardships; and

WHEREAS, the applicant initially proposed to build both the fourth and fifth floors out to the rear lot line; and

WHEREAS, in order to address certain neighbors' concerns about access to light and air, the Board asked the applicant to explore a scenario that provided a ten-foot rear setback at the fifth floor; and

WHEREAS, in response, the applicant stated that a ten-foot setback would require columns and would result in inefficient floor plates; and

WHEREAS, at hearing, the Board suggested that the applicant employ a transfer beam which could be used to expand the space between columns while creating more efficiency on the fourth and fifth floors; and

WHEREAS, the applicant agreed to explore the use of a transfer beam, though it noted that there are additional costs associated with a transfer beam and the required connecting staircase to the enlarged fifth floor; and

WHEREAS, nonetheless, the applicant revised the initial proposal so as to provide a ten ft. setback at the fifth floor; and

WHEREAS, the applicant originally sought an FAR waiver for a 4.98 FAR building, but with the addition of the fifth floor setback, this was reduced to 4.83; 4.80 FAR is permitted for community facilities in the zoning district; and

WHEREAS, accordingly, the Board finds that in light of the minor FAR waiver request and the inclusion of the ten-foot setback, this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

Assessment Statement (EAS) CEQR No. 05BSA120K, dated October 25, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6 zoning district, a proposed enlargement to the fourth and fifth floors of an existing five-story community facility building, which is contrary to Z.R. §§ 24-11 and 24-37, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 5, 2006"—four (4) sheets and "Received June 13, 2006"—two (2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building, post-enlargement: a maximum of five stories, a total floor area of 18,931 sq. ft., a total FAR of 4.83, a total height of 55'-11", and a setback of ten feet from the rear lot line at the fifth floor, all as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2006.

MINUTES

321-05-BZ

CEQR #06-BSA-028Q

APPLICANT – Sheldon Lobel, P.C., for Little Neck Commons, LLC, owner; Dunkin Donuts, lessee.

SUBJECT – Application November 2, 2005 – Under Z.R. § 73-243 – requesting a Special Permit in order to legalize an existing accessory drive-through window in an as-of-right eating and drinking establishment.

PREMISES AFFECT – 245-02 Horace Harding Expressway, South side of Horace Harding Expressway, west of the intersection with Marathon Parkway, Block 8276, Lot 100, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

Adopted by the Board of Standards and Appeals, June 20, 2006.

146-04-BZ

APPLICANT – Joseph Margolis for Jon Wong, Owner.

SUBJECT – Application April 5, 2006 – Pursuant to Z.R. § 72-21 – to allow the residential conversion of an existing manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for adjourned hearing.

124-05-BZ

APPLICANT – Greenberg Traurig LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.

SUBJECT – Application May 20, 2005 – Under Z.R. § 72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to Z.R. §§ 35-00, 23-145, 35-52, 23-82, 13-143, 35-24, and 13-142(a).

PREMISES AFFECTED – 482 Greenwich Street, Block 7309, Lot 21 and 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson, Jack Freeman and Robert Alperstein.

For Opposition: Gregory Brenden, Office of the Assembly Member Glick, Peter Himmelstein, Filippo Manlia, Kate Koster, Brian Cook, Sol Rosenblatt, Jarvis Irving, Patrick McDonough, Rich Herschlag and R. Barrett.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for decision, hearing closed.

128-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yisroel Y. Leshkowitz & Esther S. Leshkowitz, owner.

SUBJECT – Application May 24, 2005 – under Z.R. § 73-622 – to permit the proposed enlargement of an existing single family residence, located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and rear yard, is contrary to Z.R. § 23-141, § 23-461 and § 23-47.

PREMISES AFFECTED – 1406 East 21st Street, between Avenue “L” and “M”, Block 7638, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman, David Shteierman and Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for continued hearing.

151-05-BZ

APPLICANT – The Law Office of Frederick A. Becker for 100 Varick Street, LLC, Owner.

SUBJECT – Application June 16, 2005 – Zoning Variance (use) pursuant to Z.R. § 72-21 to allow a proposed ten (10) story residential building containing seventy-nine (79) dwelling units located in an M1-6 district; contrary to Z.R. § 42-00.

PREMISES AFFECTED – 100 Varick Street, located on the easterly side of Varick Street between Watts and Broome Streets, Block 477, Lots 35 and 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker, Michael Even, Charles Fridman and John Sole.

For Opposition: Sheila Pozon.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for continued hearing.

202-05-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.

SUBJECT – Application August 24, 2005 – Under Z.R. § 73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district.

PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Maria Jones and Bryan Rivera, Councilman

MINUTES

Tony Avella.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18,
2006, at 1:30 P.M., for decision, hearing closed.

334-05-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for
The Whitney Museum of American Art, owner.

SUBJECT – Application November 23, 2005 – Zoning
Variance (use & bulk) pursuant to Z.R. § 72-21 to facilitate
the expansion of an existing museum complex including the
construction of a nine (9) story structure located in C5-1(MP)
and R8B (LH-1A) zoning districts. The proposed variance
would allow modifications of zoning requirements for street
wall height, street wall recess, height and setback, mandatory
use, and sidewalk tree regulations; contrary to Z.R. §§ 24-
591, 99-03, 99-051, 99-052, 99-054, 99-06.

PREMISES AFFECTED – 933-945 Madison Avenue, 31-33
East 74th Street, East side of Madison Avenue between East
74th and East 75th Streets, Block 1389, Lots 21, 22, 23, 24, 25,
50, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Michael Sillerman.

For Opposition: Howard Zipsper, Greg Dinella, Harold
Gerber, Don Gringer, Teri Slater and Alan Flink.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 25,
2006, at 1:30 P.M., for decision, hearing closed.

338-05-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.

SUBJECT – Application November 25, 2005 – Special
Permit Z.R. § 73-622 to permit the proposed enlargement of
an existing single family home which creates non-
compliances with respect to open space and floor area, Z.R. §
23-141, less than the required side yards, Z.R. § 23-461 and
less than the required rear yard, Z.R. § 23-47.

PREMISES AFFECTED – 2224 East 14th Street, west side,
between Avenue V and Gravesend Neck Road, Block 7374,
Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Marilyn Schan, Robin Schan and Edward
Jaworski.

ACTION OF THE BOARD – Laid over to August 8,
2006, at 1:30 P.M., for continued hearing.

352-05-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Peter Procops,
owner; McDonald’s Corporation, owner.

SUBJECT – Application December 14, 2005 – Z.R. § 73-243
proposed re-establishment of an expired special permit for an
eating and drinking establishment with an accessory drive-
through, located in a C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast
corner of intersection at Beach Channel Drive, Block 15709,
Lot(s) 101, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jeffrey Chester.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18,
2006, at 1:30 P.M., for decision, hearing closed.

358-05-BZ

APPLICANT – Sheldon Lobel, P.C., for WR Group 434 Port
Richmond Avenue, LLC, owner.

SUBJECT – Application December 15, 2005 – Zoning
variance pursuant to Section 72-21 to allow UG 6 commercial
use (open accessory parking for retail) in an R3A zoned
portion of the zoning lot (split between C8-1 and R3A zoning
districts).

PREMISES AFFECTED – 438 Port Richmond Avenue,
northwest corner of Port Richmond Avenue and Burden
Avenue, Block 1101, Lot 62, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Richard Lobel and Valentino Pompeo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Chin.....3
Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to July 25,
2006, at 1:30 P.M., for decision, hearing closed.

11-06-BZ

APPLICANT – The Law Office of Frederick A. Becker for
Miriam Schubert and Israel Schubert, owner.

SUBJECT – Application January 18, 2006 – Under Z.R. §
73-622 to permit the enlargement to an existing single family
residence, located in an R-2 zoning district, which does not
comply with the zoning requirements for floor area ratio,
open space ratio and rear yard (Z.R. § 23-141 and § 23-47).
PREMISES AFFECTED – 1245 East 22nd Street, East 22nd
Street between Avenue K and Avenue L, Borough of
Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

MINUTES

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for continued hearing.

16-06-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application January 27, 2006 – Special Permit Z.R. § 73-622 to permit the proposed enlargement of a one family home, which creates non-compliances with respect to open space and floor area (Z.R. § 23-141), side yards (Z.R. § 23-461) and rear yard (Z.R. § 23-47).

PREMISES AFFECTED – 2253 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7375, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Marilyn Schan and Robin Schan.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for continued hearing.

26-06-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Empire Staten Island Development, LLC, owner; L. A. Fitness International, LLC, lessee.

SUBJECT – Application February 16, 2006 – Special Permit application pursuant to Z.R. §§ 73-03 and 73-36 to operate a 51,609 square foot Physical Culture Establishment (LA Fitness) in an existing vacant one-story building. The site is located in within an existing shopping center in a M1-1 zoning district.

PREMISES AFFECTED – 145 East Service Road/West Shore Expressway, Block 2630, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Ellen Hay, Ed Applebome and Chris Calvert.

For Opposition: Kathleen Collura.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for decision, hearing closed.

33-06-BZ

APPLICANT – Rampulla Associate Architects, for Carroll's Garden Florist Corporation, owner.

SUBJECT – Application February 28, 2006 – Zoning Variance under Z.R. §§ 72-21 to allow a horizontal and vertical enlargement of an existing one-story retail building

(UG 6) located in an R1-2 district; contrary to Z.R. § 22-00. PREMISES AFFECTED – 1457 Richmond Road, N/S Richmond Road 0'0" from the intersection of Delaware Street, Block 869, Lot 359, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

For Opposition: Susan Fennimore and Salvatore Pabzzolo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for decision, hearing closed.

62-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Albert J and Catherine Arredondo, owners.

SUBJECT – Application April 10, 2006 – Pursuant to Z.R. § 72-21 Variance is to allow the addition of a second floor and attic to an existing one story, one family residence. The enlargement will increase the degree of non-compliance for the rear yard, side yards and exceed the permitted floor area.

PREMISES AFFECTED – 657 Logan Avenue, west side of Logan Avenue 100' south of Randall Avenue, Block 5436, Lot 48, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin.....3

Negative:.....0

Absent: Commissioner Collins.....1

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 6:00 P.M.

BULLETIN

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Volume 91, Nos. 27-28

July 20, 2006

DIRECTORY

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Tuesday, July 11, 2006**

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DOCKETS

New Case Filed Up to July 11, 2006

130-06-BZ

1060 Amsterdam Avenue, West side of Amsterdam Avenue between 112th and 113th Streets, Block 1884, Lot 29,36, Borough of **Manhattan, Community Board: 9**. Under 72-21.

131-06-BZ

146 New Dorp Lane, South side of Dorp Lane 0.0' west of the corner formed by the intersection of New Dorp Lane and 8th Street., Block 4209, Lot 01, Borough of **Staten Island, Community Board: 2**. Special Permit: Z.R. §73-36(a) - For legalization of existing Physical culture Establishment located in one-story portion of existing building.

132-06-BZ

122-136 Greenwich Avenue, Northeast corner of Greenwich Avenue and 8th Avenue, Block 618, Lot 1, Borough of **Manhattan, Community Board: 2**. Under 72-21 - Proposed new construction of mixed-use building on surface parking lot. Residential uses over a commercial retail street level on a narrow, oddly-shaped,split zoning lot directly over 8th Avenue subway.

133-06-BZ

225 Varick Street, Westerly side of varick Street between West Houston Street and Clarkson Street., Block 581, Lot 63, Borough of **Manhattan, Community Board: 2**. Special Permit: 73-36 - to allow the operation of a Physical culture establishment on a portion of the second floor of a twelve story commercial building.

134-06-BZ

241-15 Northern Boulevard, Northwest corner of the intersection between Northern Boulevard and Douglaston Parkway., Block 8092, Lot 39, Borough of **Queens, Community Board: 11**. Under 72-21 - To permit the construction of a five-story multi-family residential building.

135-06-A

37 Newport Avenue, East side of New Port Walk 110.19 south of Oceanside Avenue., Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. Appeal - seeking to enlarge one family home contrary to GCL 36 and the upgarde of the private dipsosal contrary to DOB ploicy

136-06-BZ

11-15 Old Fulton Street, Old Fulton Street between Front and Water Street, Block 35, Lot 7, 8, 9, Borough of **Brooklyn, Community Board: 2**. Under 72-21 - To permit an addition of a fifth floor and a change to residential use (UG2).

137-06-BZ

1717 Hering Avenue, West side of Hering Avenue, 325 feet, south of Morris Park Avenue., Block 4115, Lot 23, Borough of **Bronx, Community Board: 11**. Under 72-21 - Proposed construction of a two-family dwelling that does not provide a required side yard/open area and does not provide required front yard.

138-06-BZ

3447 Bedford Avenue, Between Avenue M and Avenue N (approx. 170' south of Avenue M), Block 7661, Lot 31, Borough of **Brooklyn, Community Board: 14**. Special Permit: 73-622 - To allow the enlargement of a single family residence.

139-06-A

1 Irving Walk, East south Walk at the intersection of Oceanside Avenue., Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. Appeal.

140-06-BZ

25-29 Belvidere Street, East side of Belviderer Street between Broadway and Beaver Street., Block 3135, Lot 36, Borough of **Brooklyn, Community Board: 4**. Special Permit: 73-53 - To allow the enlargement of a legal conforming manufacturing building.

141-06-BZ

2084 60th Street, Southwest corner of 21st Avenue and 60th Street., Block 5521, Lot 42, Borough of **Brooklyn, Community Board: 12**. Special Permit: 73-622 - To permit the proposed Synagogue, which does not comply with floor area and lot coverage(ZR 24-11; front yards (24-34; side yard (24-35; wall height and sky expoure plane(24-521) and 25-31 (parking).

DOCKET

142-06-A

3209 Tiemann Avenue, Northwest corner of Burke Avenue and Teimann Avenue, Block 4752, Lot 173, Borough of **Bronx, Community Board: 12**. General City Law Section 35 - To permit the construction of six (2) story,(2) family homes and one (2) story (1) family home.

143-06-A

3209 Tiemann Avenue, Northwest corner of Burke Avenue and Tiemann Avenue, Block 4752, Lot 173/175, Borough of **Bronx, Community Board: 12**. General City Law Section 35 - To permit the construction of six (2) story, (2) family homes and one (2) story (1) family home.

144-06-A

3209 Tiemann Avenue, Northwest corner of Burke Avenue and Teimann Avenue, Block 4752, Lot 175, Borough of **Bronx, Community Board: 12**. General City Law Section 35 - To permit the construction of six (2) story,(2) family homes and one (2) story (1) family home.

145-06-A

3209 Tiemann Avenue, Northwest corner of Burke Avenue and Tiemann Avenue, Block 4752, Lot 175, Borough of **Bronx, Community Board: 12**. General City Law Section 35 - To permit the construction of six (2) story, (2) family homes and one (2) story (1) family home.

146-06-A

3209 Tiemann Avenue, Northwest corner of Burke Avenue and Tiemann Avenue, Block 4752, Lot 175/182, Borough of **Bronx, Community Board: 12**. General City Law Section 35 - To permit the construction of six (2) story, (2) family homes and one (2) story (1) family home.

147-06-A

3209 Tiemann Avenue, Northwest corner of Burke Avenue and Tiemann Avenue, Block 4752, Lot 182, Borough of **Bronx, Community Board: 12**. General City Law Section 35 - To permit the construction of six (2) story, (2) family homes and one (2) story (1) family home.

148-06-A

3209 Tiemann Avenue, Northwest corner of Burke Avenue and Tiemann Avenue, Block 4752, Lot 182, Borough of **Bronx, Community Board: 12**. General City Law Section 35 - To permit the construction of a (2) story, (2) family home and one (2) story (1) family home.

149-06-BZ

3701 14th Avenue, Southwest corner of the intersection formed by 14th Avenue and 37th Street, Block 5348, Lot 9 (portion), Borough of **Brooklyn, Community Board: 12**. Under 72-21 - to permit the development of the site to accommodate a not-for-profit ambulance/emergency vehicle garage, dispatch, and training facility.

150-06-A

2550 Kingsland Avenue, 284.03' south of intersection of Allerton Avenue and Kingsland Avenue., Block 4488, Lot 30, Borough of **Bronx, Community Board: 11**. Appeals - To construct (2) new (2) family buildings which would comply with building law and zoning resolutions.

151-06-A

2552 Kingsland Avenue, 284.03' south of intersection of Allerton Avenue and Kingsland Avenue., Block 4488, Lot 32, Borough of **Bronx, Community Board: 11**. Appeals - To construct (2) new (2) family buildings which would comply with building laws and zoning resolutions.

152-06-BZ

82 Lamberts Lane, South west corner of Lamberts Lane and Seldin Avenue, Block 1609, Lot 16, Borough of **Staten Island, Community Board: 2**. Special Permit: Z.R. §73-125 - To permit ambulatory diagnostic/treatment care facility in excess of 1, 500 sq.ft.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

AUGUST 15, 2006, 10 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday Morning*, August 15, 2006, at 10 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

802-48-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Sheldon Rodbell 1993 Trust #2, owner; Beach Channel Island Drive, lessee.

SUBJECT – Application November 2, 2005 - Pursuant to ZR 11-411 for the Extension of Term of a UG16 gasoline service station with automotive repair for a term of ten years, to expire in June 24, 2015. This application also purposes to legalize the conversion of two service bays to an accessory convenience store, maintain one service bay for minor auto repairs and the continuation of gasoline service sales. The premise is located in an R5 zoning district.

PREMISES AFFECTED – 13-46 Beach Channel Dr., a/k/a 2118 Dix Place, Northeast corner of Beach Channel Drive and Dix Place, Block 15527, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

441-65-BZ

APPLICANT – Sheldon Lobel, P.C. for Eleanor Barrett c/o JP Morgan Chase, owner; Hess Amerada Corporation, lessee.

SUBJECT – Application March 20, 2006 - Pursuant to ZR 73-11 & 73-211 an Amendment to a previously granted special permit for the redevelopment of a gasoline service station, to construct an accessory convenience store (Hess Express), to construct a new canopy and six pump islands with MPD dispensers and one diesel fuel dispenser. The premise is located in C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2488 Hylan Boulevard, located on the east side of Hylan Boulevard between Jacques Avenue and New Dorp Lane, Block 3900, Lot 12, Borough of Staten Island.

COMMUNITY BOARD #2SI

68-94-BZ II

APPLICANT – Cozen O’Connor, for Bay Plaza Community Center LLC, owner; Jack Lalanne Fitness Centers, Incorporated, lessee.

SUBJECT - Application June 30, 2006 - This application is to Reopen and Extend the Time to Obtain a Certificate of Occupancy for the operation of a PCE (Bally Total Fitness) on the first and second floors of the Co-Op City Bay Plaza shopping center which expires on August 23, 2006. The requested amount of time is 18 months. The premise is located in an C4-3 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, Southside at eastern-most side of Baychester Avenue, Block 5141, Lot 810, Borough of the Bronx.

COMMUNITY BOARD #10BX

114-94-BZ, Vol. II

APPLICANT – Ralph Giordano, AIA for Freehold SL Limited Partnership, owner; Kentucky Fried Chicken Corporation, lessee.

SUBJECT – Application March 24, 2006 – Extension of Term/Waiver – to allow the continuation of a drive-thru-facility that is accessory to an existing eating and drinking establishment located in a C1-2 zoning district which expired on July 2, 2005. The application seeks to renew the term for an additional 5 years.

PREMISES AFFECTED – 44 Victory Boulevard, Bay Street and VanDuzer Street, Block 498, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

Jeff Mulligan, Executive Director

AUGUST 15, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday afternoon*, August 15, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

291-05-BZ

APPLICANT – Eric Palatnik, P.C. for Rallaele DelliGatti, owner.

SUBJECT – Application September 22, 2005 - Pursuant to ZR 72-21 for a Variance to allow for the demolition of an existing single family residence and its re-development with a new single family residence which has less than the required front yard, ZR 23-45. The premise is located in an R-2A zoning district.

PREMISES AFFECTED - 10-33 Burton Street, Burton Street between 12th Avenue and 12th Road, Block 4607, Lot 26, Borough of Queens.

COMMUNITY BOARD #7Q

37-06-BZ

APPLICANT – Leo Weinberger, Esq., for 180 Lafayette

CALENDAR

Corporation, owner, Skin Care 180, Incorporated, lessee.
SUBJECT - Application March 2, 2006 - under Z.R. §73-36
to allow the proposed PCE (Jasmine Spa) on the first floor
and cellar level in an existing seven-story building. The
premise is located in a M1-5B zoning district.
PREMISES AFFECTED – 180 Lafayette Street, east side of
Lafayette Street between Grand and Broome Streets, Block
473, Lot 43, Borough of Manhattan.
COMMUNITY BOARD #2M

Jeffrey Mulligan, Executive Director.

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 11, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar, and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, April 25, 2006 and Wednesday morning April 26, 2006 as printed in the bulletin of May 5, 2006, Volume 91, Nos. 17 & 18. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

224-66-BZ

APPLICANT – Peter Hirshman, for Building Management Co., owner.

SUBJECT – September 23, 2005 – Extension of Term & Waiver for the re-establishment of transient parking use within the existing garage of a multiple dwelling which expired on June 14, 2001. The proposed term of this filing is for ten (10) years. The premise is located in an R8B zoning district.

PREMISES AFFECTED – 325-335 East 49th Street, aka 328-334 50th Street, northside of East 49th Street, 262’-4” west of First Avenue, Block 1342, Lots 12, 13, 15, 39, 41, 111, 139, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term of the prior grant, which expired on June 14, 2001; and

WHEREAS, a public hearing was held on this application on June 13, 2006, after due notice by publication in *The City Record*, and then to decision on July 11, 2006; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, on June 14, 1966, the Board granted a zoning variance and a Multiple Dwelling Law waiver under the subject calendar number to allow 25 transient parking spaces in the cellar accessory garage of a multiple dwelling located at the subject premises, for a term of 15 years; and

WHEREAS, subsequently, the term has been extended for

two periods of ten years, most recently on March 30, 1993, which expired on June 14, 2001; and

WHEREAS, the applicant submitted photographs of the notice to tenants posted in the garage which, as one of the conditions of the previous grant, identifies their right to recapture transient parking spaces pursuant to the Multiple Dwelling Law; and

WHEREAS, the Board has reviewed the record and finds that the instant application is appropriate to grant, based upon the evidence submitted.

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, and *reopens* and *amends* the resolution having been adopted on June 14, 1966, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from June 14, 2001, the expiration of the prior grant, expiring on June 14, 2011; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received ‘June 27, 2006’-(2) sheets, and *on further condition*:

THAT this term shall expire on June 14, 2011;

THAT there shall be a maximum of 25 parking spaces used for transient parking at the cellar floor at the subject premises;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained within one year of the date of this grant;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(NB 266/1961)

Adopted by the Board of Standards and Appeals, July 11, 2006.

393-66-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Athena Properties, owner; Ace Dropcloth Co., lessee.

MINUTES

SUBJECT – Application May 2, 2006 – Application for a waiver of the Rules and Procedure and an extension of time to obtain a certificate of occupancy.

PREMISES AFFECTED – 453 East Tremont Avenue, East Tremont Avenue and Washington Avenue, Block 3034, Lot 52, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to obtain a new certificate of occupancy; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, and then to decision on July 11, 2006; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since July 19, 1966, when the Board granted an application to permit a change in use from a bowling alley and lounge to manufacturing of canvas products and textiles; and

WHEREAS, subsequently, the grant was amended by the Board on November 23, 1999, to permit the use of a portion of the second floor as storage for the manufacturing on the first floor; and

WHEREAS, a condition of the most recent amendment was that a new certificate of occupancy be obtained by November 23, 2000; and

WHEREAS, however, the applicant represents that although construction was completed within the specified time period, DOB required a sprinkler system and other additional work; and

WHEREAS, the applicant represents that the DOB plans had to be modified to incorporate the changes and that additional time and expenditures were required; and

WHEREAS, the applicant states that all work is completed and inspected and that the application for a certificate of occupancy is pending at DOB; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, as adopted on July 19, 1966 under the subject calendar number, and as subsequently amended, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy for an additional period of six months from the prior grant’s expiration, to expire on January 11, 2007, on condition:

THAT a new certificate of occupancy shall be obtained by January 11, 2007;

THAT all conditions from prior resolutions not specifically

waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 200454230/99)

Adopted by the Board of Standards and Appeals, July 11, 2006.

335-88-BZ

APPLICANT – Eric Palatnik, P.C., for 5808 Flatlands Realty Corp., owner.

SUBJECT – Application December 16, 2005 – Pursuant to Z.R. §11-411 for the Extension of Term of Variance which expired on July 3, 2005 and to waive the Rules of Practice and Procedure to file more than 30 days after expiration. The use on site is for an automotive service station (Sunoco) with minor auto repairs and accessory convenience store.

PREMISES AFFECTED – 5808/28 Flatland Avenue, southwest corner of East 59th Street, and Flatlands Avenue, Block 7784, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and, pursuant to ZR § 11-411, an extension of term of a prior grant for a gasoline service station, which expired on July 3, 2005; and

WHEREAS, a public hearing was held on this application on June 6, 2006, after due notice by publication in *The City Record*, and then to decision on July 11, 2006; and

WHEREAS, Community Board 18, Queens, recommends approval of this application; and

WHEREAS, the subject 24,000 sq. ft lot is located on the southwest corner of East 59th Street and Flatlands Avenue; and

WHEREAS, the site is located within an R3-2 zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1958 when, under BSA Cal. No. 373-57-BZ, the Board granted an application for the construction of a gasoline service station with accessory uses and parking for cars awaiting service; and

WHEREAS, subsequently, the term has been extended

MINUTES

and the grant amended by the Board at various times, most recently on May 25, 1999, under the subject calendar number, for a term of ten years from the expiration of the prior grant, expiring on July 3, 2005; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, at hearing, the Board asked the applicant to remove on-site trailers that were not on the BSA-approved plans; and

WHEREAS, the applicant provided photographs of the site with the trailers removed; and

WHEREAS, additionally, the Board asked the applicant if the curb cut on East 59th Street could be removed; and

WHEREAS, the applicant responded that because East 59th Street is a one-way street, the curb cut must be maintained in order to provide better circulation and access at the site; and

WHEREAS, pursuant to ZR §11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on May 25, 1999, as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on July 3, 2015, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received May 3, 2006'-(3) sheets and 'June 23, 2006'-(2) sheets, and *on further condition*:

THAT the term of this grant shall be for ten years from the expiration of the prior grant, to expire on July 3, 2015;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review and approve the layout of the onsite parking;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

(NB 300539567)

Adopted by the Board of Standards and Appeals, July 11, 2006.

45-90-BZ

APPLICANT – Walter T. Gorman, P.E., for Red Hook Land LLC, owner; Red Hook Service Station LLC, lessee.

SUBJECT – Application December 20, 2004 – Extension of Time/Waiver – To complete construction and secure a new Certificate of Occupancy.

PREMISES AFFECTED – 260 Hamilton Avenue, northeast corner of Henry Street, Block 527, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed for lack of prosecution.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the subject application as originally filed sought an extension of time to complete construction and obtain a new certificate of occupancy for a building authorized by the Board under a prior variance; and

WHEREAS, the prior variance was granted on February 25, 1992, and permitted a gasoline service station in a C2-3(R5) zoning district; this grant was subsequently extended and modified at various times, the last being July 16, 2002, when the Board allowed an amendment to enlarge the convenience store and office at the site; and

WHEREAS, the application was filed on December 20, 2004 by Walter T. Gorman, P.E. as the applicant; and

WHEREAS, subsequent to the filing, the Board's examination staff was informed by Mr. Gorman's office that he would not longer be prosecuting the application; and

WHEREAS, no new applicant has been authorized to prosecute the subject application; and

WHEREAS, the Board placed the matter on the calendar for a dismissal hearing; and.

WHEREAS, a notice of this hearing was then sent to the applicant on May 13, 2005; and

WHEREAS, because of the lack of prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 45-90-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, July 11, 2006.

71-93-BZ

APPLICANT – Paul F. Bonfilio, for Vincenzo Farruggio, owner.

SUBJECT – Application May 11, 2006 – Amendment to a previously granted Variance ZR §72-21 to construct an additional single family residence on one zoning lot that has been sub-divided into two tax lots. The proposed application

MINUTES

does not have the required 15' front yard and is contrary to ZR 23-45.

PREMISES AFFECTED – 153-11 Bayside Avenue, 193' west of 154th Street, Block 4835, Lot 27, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Paul Bonfilio

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, to permit the construction of an additional single family residence on one zoning lot that has been sub-divided into two tax lots; and

WHEREAS, a public hearing was held on this application on June 13, 2006, after due notice by publication in *The City Record*, and then to decision on July 11, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 7, Queens, and the Queens Borough President recommended conditional approval of this application; and

WHEREAS, the subject site is a 7,459 sq. ft. lot, with frontage on Bayside and 29th Avenues, and 154th Street; and

WHEREAS, the lot is trapezoidal-shaped, with four frontages and a length ranging from 299.59 to 308.25 feet and a depth ranging from 14.28 to 41.61 feet; and

WHEREAS, on February 1, 1994, the Board granted an application under ZR §72-21, to permit the construction of a single-family dwelling on the west side of the lot that did not provide the requisite two front yards; and

WHEREAS, subsequently, on August 19, 2005, the Board approved by letter of no objection, an amendment which allowed for the subdivision of the lot into two tax lots; and

WHEREAS, the applicant proposes to construct a second two-story single-family home on the second tax lot, lot 27; the first two-story single-family home, built under the subject calendar number is on tax lot 25; and

WHEREAS, the new dwelling will provide one front yard of 2'-0" and one front yard of 1'-6" (two front yards of 15 ft. are the minimum required); and

WHEREAS, the new dwelling will have 2,177.5 sq. ft. of floor area; the proposed total floor area of the two houses on the zoning lot is 3,786 sq. ft.; and

WHEREAS, the applicant represents that the proposal would increase the residential FAR on the lot from .175 to .46 (.50 is the maximum permitted); and

WHEREAS, the Board notes that the site, with the first home alone, is significantly underdeveloped; and

WHEREAS, the applicant submits that with this request, the total floor area, side yards, and open space area are still

within the parameters originally approved by the Board; and

WHEREAS, the applicant does not seek any other waivers; and

WHEREAS, the Board notes that the relief sought for the development of the newly-formed tax lot is the same as for the development of the original zoning lot; and

WHEREAS, the Board also notes that the shape of the lot compromises complying development of the new dwelling, just as it compromised construction of the prior dwelling; and

WHEREAS, the Board concludes that the proposed dwelling does not affect the prior findings that the first home was compatible with the neighborhood character and that the relief granted was the minimum necessary; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on February 1, 1994, so that as amended this portion of the resolution shall read: "to permit the construction of a second two-story single-family home on the zoning lot which does not comply with the front yard requirement; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received May 11, 2006'-(9) sheets; and *on further condition*:

THAT the entire site, with both homes, shall have a total FAR of .46, and a total of 3,486 sq. ft. of floor area;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the Department of Buildings shall review compliance with all applicable light and air requirements;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Alt. No. 947-80)

Adopted by the Board of Standards and Appeals, July 11, 2006.

200-24-BZ

APPLICANT – Stephen Ely, for Ebed Realty c/o Ruben Greco, owner.

SUBJECT – Application May 11, 2006 – Pursuant to Rules of Practice and Procedure to reopen and amend the resolution for the Extension of Time to Obtain a Certificate of Occupancy, for a bookstore and distribution, which expired on April 12, 2006.

PREMISES AFFECTED – 3030 Jerome Avenue, aka 3103 Villa Avenue, 161.81' south of East 204th Street, Block 3321, Lot 25, Borough of The Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

MINUTES

For Applicant: Stephen Ely

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and
Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to July 25,
2006, at 10 A.M., for decision, hearing closed.

499-29-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum,
owner; BP Products, lessee.

SUBJECT – Application March 3, 2006 – Application for the
Extension of Term of an Automotive Service Station with an
accessory automotive repair establishment located in a C1-
2/R3-2 zoning district. The term expired on March 23, 2006.

The application is seeking a 10 year extension.

PREMISES AFFECTED – 248-70 Horace Harding
Expressway, southwest corner of Marathon Parkway, Block
8276, Lot 660, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and
Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8,
2006, at 10 A.M., for decision, hearing closed.

739-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer
Development Co., owner; Peter Pan Games of Bayside,
lessee.

SUBJECT – Application May 4, 2006 – Reopening for an
extension of term of a special permit pursuant to ZR §73-03
to permit an existing shopping center, the conversion of a
retail store to an amusement arcade.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue
and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and
Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to July 25,
2006, at 10 A.M., for decision, hearing closed.

129-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Town
Sports International, Inc., owner.

SUBJECT – Application September 21, 2004 – Pursuant to
ZR 73-11 to re-open and amend the BSA resolution for the
Extension of Term of a Physical Culture Establishment (New
York Sports Club) and an Amendment to legalize
modifications to the interior layout located in a five-story and
cellar commercial building. This companion to BSA Cal.
130-93-BZ.

PREMISES AFFECTED – 151-155 East 86th Street, north
side of East 86th Street, 62' east of Lexington Avenue, Block
1515, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to August 22,
2006, at 10 A.M., for continued hearing.

130-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 161
East 86th Street, LLC, owner; TSI East 86th Street, Inc.,
lessee.

SUBJECT – Application September 21, 2004 – Pursuant to
ZR 73-11 to re-open and amend the BSA resolution for the
Extension of Term of a Physical Culture Establishment (New
York Sports Club) which occupies the fifth floor and
mezzanine of a five-story commercial building. This
Application is also seeking an Amendment to legalize the
expansion in floor area of the P.C.E. into the third and fourth
floors of the commercial building. This is companion to BSA
Cal. 129-93-BZ.

PREMISES AFFECTED – 157-161 East 86th Street, north
side of East 86th Street, 139' of Lexington Avenue, Block
1515, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to August 22,
2006, at 10 A.M., for continued hearing.

173-95-BZ

APPLICANT – Stephen J. Rizzo, Esq., for 80 East 85th Street
Company, owner; David Barton Gym Corp., lessee.

SUBJECT – Application March 10, 2006 – Pursuant to ZR
73-11 & 73-36 for the Extension of Term/Waiver of a
Physical Culture Establishment (David Barton Gym) in a
portion of the first floor and the entire second floor of a 30
story residential building.

PREMISES AFFECTED – 30 East 85th Street, Madison
Avenue and East 85th Street, Block 1496, Lot 7501, Borough
of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Stephen J. Rizzo.

MINUTES

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for decision, hearing closed.

132-97-BZ/24-06-A

APPLICANT – Alan R. Gaines, Esq., for Deti Land, LLC, owner; Fiore Di Mare LLC, lessee.

SUBJECT – Application June 7, 2005 and January 3, 2006 – Extension of Term/Amendment/Waiver for an eating and drinking establishment with no entertainment or dancing and occupancy of less than 200 patrons, UG 6 located in a C-3 (SRD) zoning district. Proposed legalization of four on-site parking spaces for an eating and drinking establishment (Fiore Di Mare) located in the bed of a mapped street, is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 227 Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island.

COMMUNITY BOARD# 3SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 25, 2006, at 10 A.M., for deferred decision.

83-00-BZ

APPLICANT – Eric Palatnik, P.C., for KFC US Properties, Inc., owner.

SUBJECT – Application September 21, 2005 – Reopening for a waiver of the Rules of Practice and Procedure and for an extension of the term of special permit which expired September 26, 2003.

PREMISES AFFECTED – 87-11/21 Northern Boulevard, northern corner of 88th Street, Block 1417, Lot 36, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik and Leo Viana.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to August 8, 2006, at 10 A.M., for continued hearing.

324-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Janine Realty, LLC, owner.

SUBJECT – Application December 8, 2005 - Amendment to

a previously granted Variance ZR §72-21 to allow the conversion of three floors in a commercial building to residential use.

PREMISES AFFECTED – 1077 Bay Street, Block 2825, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Josh Rinesmith

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to July 25, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

231-04-A

APPLICANT – Joseph P. Morsellino, Esq., for Chris Babatsikos and Andrew Babatsikos, owners.

SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243rd Street, Block 8103, Lot 5, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 14, 2004, acting on Department of Buildings Application No. 401948960, reads, in pertinent part:

“Respectfully request permission to build the proposed building in a bed of a mapped street.”; and

WHEREAS, this is an application made pursuant to General City Law 35, to permit the construction of a conforming single-family dwelling that will encroach into a portion of the bed of a mapped but unbuilt street; and

WHEREAS, a public hearing was held on this application on October 25, 2005, after due notice by publication in the *City Record*, with continued hearings on December 6, 2005, January 24, 2006, February 14, 2006, March 7, 2006, April 4, 2006, May 16, 2006, June 20, 2006, and then to decision on July 11, 2006; and

WHEREAS, Chair Srinivasan and Vice-Chair Babbar visited the site; and

WHEREAS, Community Board 11, Queens, the local council member, the local civic association, and certain neighbors (collectively, the “opposition”), opposed this

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application for reasons discussed below; and

WHEREAS, the subject premises is an approximately 9,500 sq. ft. lot, which extends 40 ft. into a mapped but unbuilt portion of Depew Avenue (this 40 ft. portion is hereinafter referred to as the "Widening"); and

WHEREAS, Depew Avenue dead ends near the east property line of the subject premises; from the dead end, there is a slope down to 243rd Street, which runs perpendicular to Depew; and

WHEREAS, the owner of the premises initially proposed to build a home that would have extended 20 ft. into the Widening; and

WHEREAS, however, by letter dated September 21, 2005, the Department of Transportation stated that the proposed construction would interfere with DOT's proposal to construct a step street and ramp, connecting Depew Avenue with 243rd Street; and

WHEREAS, at the request of the Board, DOT provided further information regarding this proposal, including a diagram of the steps and ramp and a Capital Project number; and

WHEREAS, the diagram showed that the steps and ramp would occupy the entire 40 ft. of the owner's property that extends into the Widening; and

WHEREAS, the applicant stated that DOT would be required to condemn this portion of the owner's property in order to build the steps and ramp; and

WHEREAS, at the urging of the Board, DOT modified its proposal; and

WHEREAS, specifically, in a letter dated July 7, 2006, DOT indicates that it is now not proposing to improve Depew to its full width in this location; and

WHEREAS, however, DOT asked that the applicant make some modifications to its proposal; and

WHEREAS, specifically, the applicant revised its proposal to reflect a five foot sidewalk extended to the front of the site, and then along the front of the site from a distance of 28 feet with a dropped curb at the driveway; this plan is acceptable to DOT; and

WHEREAS, the other interested City agencies did not have any objection to this application; and

WHEREAS, specifically, by letter dated June 30, 2004, the Fire Department states that it has reviewed the proposal and has no objection; and

WHEREAS, further, by letter dated September 14, 2004, the Department of Environmental Protection states that it has reviewed the proposal and has no objection; and

WHEREAS, during the course of the hearing process, the opposition made the following arguments in support of their contention that the application should not be granted: (1) the proposed construction is near a wetland estuary, and would negatively affect it; (2) a tree on the property that would need to be removed in order to construct the proposed dwelling is non-removable due to a deed restriction; (3) the steep slope on the site would have to be filled in, which would affect parkland at the bottom of the slope; (4) the area is adjacent to the Long Island Railroad; and (5) the proposed construction would

interfere with an easement; and

WHEREAS, the Board has reviewed these arguments and the applicant's response to them, and finds that none are persuasive, particularly since the only relief applied for through the instant application is the ability to build in a portion of Depew Avenue; and

WHEREAS, the proposed dwelling must conform in all respects to applicable zoning provisions, and all other laws and regulations, including those related to development near wetlands, parks, and transportation right of ways; and

WHEREAS, further, disputes as to any applicable deed restrictions or easements and any impact the proposed construction might have on them may be resolved in another forum; the Board is not the venue for such disputes; and

WHEREAS, based upon the above, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 14, 2004, acting on Department of Buildings Application No. 401948960, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received July 5, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 11, 2006.

372-05-BZY & 373-05-BZY

APPLICANT – Adam Rothkrug, for Woodrow Estates North LLC, owner.

SUBJECT – Application December 27, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. §11-332. Prior R4 Zoning District. Current R3-A (HS) Zoning District.

PREMISES AFFECTED – 28 Webster Avenue (aka 101 Stanley Avenue) Block 111, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

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ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of certificates of occupancy for, two three-family dwellings currently under construction at the subject premises; and

WHEREAS, the Board notes that while separate applications were filed for each permit for each of the buildings, in the interest of convenience, it heard the cases together and the record is the same for both of the applications; and

WHEREAS, a public hearing was held on this application on May 9, 2006, after due notice by publication in *The City Record*, with a continued hearing on June 13, 2006 and then to decision on July 11, 2006; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on the condition that construction be completed within six months; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the subject premises is located on the west side of Webster Avenue, north of Stanley Avenue; and

WHEREAS, the premises are currently located within an R3A (HS) zoning district, but were formerly located within an R4 zoning district; and

WHEREAS, the development complies with the former R4 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on December 3, 2003 (hereinafter, the “Enactment Date”), the City Council voted to adopt the rezoning of the area, which rezoned the sites to R3A; and

WHEREAS, as of that date, foundation construction progressed, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Board to determine that construction may continue under such circumstances; and

WHEREAS, the Board made its initial determinations as to the two applications on May 11, 2004; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain certificates of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-332; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of two or more buildings on contiguous zoning lots, as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be

granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the new building permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed buildings subsequent to the issuance of the permits resulted in fully-constructed foundations and partial completion of the first floor above grade, comprising 30 percent of the total required construction work; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of both lots, showing partial completion above grade, and financial transaction statements; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, the applicant represents that the following work remains to be done: general masonry and brick construction, and finishing, including the installation of the upper floors, doors, and windows; and

WHEREAS, the Board notes that the actual completion of physical construction is substantial in itself, in that it resulted in tangible above-grade construction; and

WHEREAS, in response to the Community Board’s concern that construction be completed within six months, the

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Board asked the applicant about whether this timeframe could be complied with; and

WHEREAS, the applicant responded that construction could be completed within six months, but that two additional months would be needed to obtain the certificate of occupancy; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid is \$137,544 and remaining costs are approximately \$250,000; in support of this claim, the applicant has submitted a financial transaction statement; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a nine-month extension for completion of construction, pursuant to ZR §11-332.

Therefore it is Resolved that this application made pursuant to ZR §11-332 to renew Building Permit Nos. 500650137 and 500650128, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development for one term of nine months from the date of this resolution, to expire on April 11, 2007; an additional six months is permitted to obtain a certificate of occupancy, to expire on October 11, 2007.

Adopted by the Board of Standards and Appeals, July 11, 2006.

134-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Gaspare Colomone, owner.

SUBJECT – Application May 31, 2005 – Proposed construction of a three dwellings, which lies in the bed of a mapped street (67th Street) which is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 53-31 67th Street, 53-33 67th Street, and 67-02 53rd Road, Block 2403, Lot 117, 217, 17, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Eric Palatnik

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to July 25, 2006, at 10 A.M., for decision, hearing closed.

299-05-A

APPLICANT – Sheldon Lobel, P.C., for Henry Cheung, owner.

SUBJECT – Application October 4, 2005 – Proposal to build one, two story, one family home which lies in the bed of a mapped street (Getz Avenue), which is contrary to Section 35 of the General City Law, Borough of Queens.

PREMISES AFFECTED – 369 Wilson Avenue, north side of Wilson Avenue between Eltingville Boulevard and Ridgewood, Block 5507, Lot 13, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Zara F. Fernandes.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for continued hearing.

364-05-A & 365-05-A

APPLICANT – Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 87-30 and 87-32 167th Street, 252’ north of the corner formed by the intersection of Hillside Avenue and 167th Street, Block 9838, Lots 114 and 116, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES – Josh Rinesmith.

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for adjourned hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 1:00 P.M.

REGULAR MEETING TUESDAY AFTERNOON, JULY 11, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, and Commissioner Collins.

ZONING CALENDAR

260-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for

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Leewall Realty by Nathan Indig, owner.

SUBJECT – Application July 20, 2004 – under Z.R. §72-21 to permit the proposed construction of a four story, penthouse and cellar three-family dwelling, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 222 Wallabout Street, 64’ west of Lee Avenue, Block 2263, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

Adopted by the Board of Standards and Appeals, July 11, 2006.

262-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tishrey-38 LLC by Malka Silberstein, owner.

SUBJECT – Application July 22, 2004 – under Z.R. §72-21, to permit the proposed construction of a four story, penthouse and cellar four-family dwelling, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 218 Wallabout Street, 94’ west of Lee Avenue, Block 2263, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

Adopted by the Board of Standards and Appeals, July 11, 2006.

100-05-BZ

APPLICANT – Martyn & Don Weston, for 223 Water Street, LLC, owner.

SUBJECT – Application April 25, 2005 – under Z.R. §72-21 to permit the proposed conversion of the second and third floors, of a six story manufacturing building, to residential use, Use Group 2, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 223 Water Street, a/k/a 48 Bridge Street, northwest corner, Block 31, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and

Commissioner Collins.....3
Negative:.....0

Adopted by the Board of Standards and Appeals, July 11, 2006.

297-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Vestry Acquisition, LLC, owner.

SUBJECT – Application September 30, 2005 – Zoning Variance (use) pursuant to Z.R. §72-21 to allow a proposed nine (9) story residential building containing seven (7) dwelling units and eight (8) accessory parking spaces located in an M1-5 district (Area B2) of the Special Tribeca Mixed Use District; contrary to Z.R. §42-00, §111-104(b) and §13-12.

PREMISES AFFECTED – 33 Vestry Street, located on the southerly side of Vestry Street, 100’ west of Hudson Street, Block 219, Lot 18, Borough of Manhattan.

COMMUNITY BOARD#1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT:

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 23, 2006, 2006, acting on Department of Buildings Application No. 104013781, reads, in pertinent part:

“The proposed residential use within M1-5 district is not permitted. [ZR 42-00]

Proposed new building is located within area B2 of TMU special district, . . . residential use below third floor is not permitted per this section. [ZR 111-04 (d)] Portion of building penetrates the sky exposure plane.

As per this section for narrow street 20’ setback is required after 85 feet or six stories. [ZR 43-43]

Proposed number of parking spaces is not permitted per ZR 13-12.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-5 zoning district, a nine-story residential building with eight accessory parking spaces in the cellar level and seven dwelling units on the upper floors, which is contrary to ZR §§ 42-00, 111-104(d), 43-43, and 13-12; and

WHEREAS, the proposed building will have a total Floor Area Ratio (FAR) of 5.0, and a residential FAR of 5.0, a 89’-1” street wall, a maximum of 111’-2” in total height without bulkheads, and a maximum of 121’-3” in total height with bulkheads; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in the *City Record*, with a continued hearing on June 6, 2006, and

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then to decision on July 11, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 1, Manhattan, recommends approval of the application on condition that the FAR of the proposed building be limited to 5.0; and

WHEREAS, the subject premises is located on the south side of Vestry Street, 100 feet west of Hudson Street, and has 5,306 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5 zoning district within Area B2 of the Special Tribeca Mixed Use District, and also the Tribeca North Historic District; and

WHEREAS, the site is currently occupied by a parking lot; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small and vacant; and (2) the site is burdened with a high water table and is within the Canal Street flood plain; and

WHEREAS, the applicant submitted a 400 ft. radius diagram and a land use map of the area which illustrate that the site is one of only two vacant parcels of the 52 sites reflected on the radius diagram; and

WHEREAS, the applicant also notes that the subject lot is relatively narrow and that other smaller lots within the diagram are already developed with either multiple dwellings or pre-existing commercial buildings; and

WHEREAS, the Board observes that there is only one other vacant site within the 400-ft. radius; and

WHEREAS, as to the subsurface conditions, the applicant represents that additional foundation costs arise due to the high water table; and

WHEREAS, the applicant supported this statement with a letter prepared by its engineering consultant indicating that test borings from the site indicate water levels are between 12 and 15 feet below grade; and

WHEREAS, the Board has reviewed this claim and the evidence submitted in support of it, and agrees that said condition leads to increased construction costs in developing the site with a conforming development; and

WHEREAS, additionally, the Board agrees that other sites in the area that may have similar subsurface and physical conditions are already developed or could be enlarged as-of-right; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing an as of right commercial/office building, with an FAR of 5.0; and

WHEREAS, the applicant concluded that such a scenario

would result in a loss, due to the size of the lot, as well as premium construction costs related to the subsurface conditions; and

WHEREAS, however, the Board had concerns regarding certain aspects of this study, and identified them at hearing; and

WHEREAS, specifically, the Board questioned: (1) the actual amount of the premium construction costs related to the identified hardships; (2) the claimed overall construction costs; (3) the comparables uses to establish the sell-out price of the condominium units; and

WHEREAS, the applicant, in subsequent submissions, satisfactorily addressed each of these concerns; and

WHEREAS, specifically, the applicant: provided more detailed information about the premium construction costs, and eliminated certain costs as hardship costs; established that the overall construction costs per square foot was comparable to other similar construction projects, and also updated these costs; and revised the site valuation comparables, per the Board's instruction; and

WHEREAS, based upon its review of the subsequent submissions of the applicant, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is a mix of residential and commercial uses, with some remaining manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, some of which occupy the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the character of the area has become residential, and finds that the introduction of seven dwelling units and eight accessory parking spaces will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the applicant states further that the area around the subject premises permits as-of-right conversion of upper floors of existing buildings to residential use; and

WHEREAS, the Board notes that the Department of City Planning accepts applications for residential conversions on all floors within the area; and

WHEREAS, the Board asked the applicant to examine retail use on the first floor; and

WHEREAS, the applicant responded that due to the history of manufacturing development on Vestry Street, retail

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uses were not permitted and do not exist today; thus, the street would not support such a use; and

WHEREAS, the applicant also states that the eight parking spaces will replace an existing parking lot with more than 25 spaces, thereby lessening traffic impact; and

WHEREAS, as to the height and massing, the applicant states that the proposed building would be similar in height to existing loft-style buildings in the neighborhood; and

WHEREAS, because the site is located in the Tribeca North Historic District, the applicant made an application to, and received approval and a Certificate of Appropriateness, dated September 20, 2005, from the Landmarks Preservation Commission for the proposed design; and

WHEREAS, the Board observes that the proposed street wall is equal in height to a portion of the street wall of the adjacent building at 35 Vestry Street and the adjacent building located around the corner at 169 Hudson Street and is comparable or lower in height to other buildings located across Vestry Street; and

WHEREAS, the applicant notes that the proposed building complies with all of the bulk controls applicable in an R7X zoning district aside from maximum base height, setback, and parking.

WHEREAS, the Board further notes that the proposed total height of 121'3" does not exceed the maximum building height of the R7X zoning district that limits residential buildings to 125 feet in height; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's height and FAR are consistent with other buildings in the neighborhood; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant states, and the Board agrees, that the return associated with the proposed building represents the minimum variance; and

WHEREAS, the Board observes that the proposed building of seven dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, in addition, the applicant asserts that the parking waiver request meets the requirements of ZR § 13-561 under which the City Planning Commission may permit such parking if "(a) such parking spaces are needed for, and will be used by, the occupants, visitors . . . of the use to which they are accessory; (b) within the vicinity of the site, there are insufficient parking spaces available; (c) the facility will not

create or contribute to serious traffic congestion nor will unduly inhibit vehicular and pedestrian movement; (d) the facility is so located as to draw a minimum of vehicular traffic to and through local residential streets; and (e) adequate reservoir space is provided . . ."; and

WHEREAS, the applicant notes that the eight parking spaces allow for one accessory space per residential condominium unit with an additional handicapped-accessible space; and

WHEREAS, the applicant represents that there are an insufficient number of parking spaces within the vicinity of the site and that the facility is located so as to draw a minimum of vehicular traffic to and through residential streets; and

WHEREAS, further, the applicant represents that the small parking facility will not create or contribute to serious traffic congestion nor will it unduly inhibit vehicular and pedestrian movement as it replaces a parking lot with more than 25 spaces; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the subject site is located within the Tribeca North Historic District and as previously noted in this resolution, a COA has been issued for this proposal by the LPC on September 20, 2005; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA020M, dated April 5, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit on a site within an M1-5 zoning district, a nine-story residential building with eight accessory parking spaces in the cellar level and seven dwelling units on the upper floors, which

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is contrary to ZR §§ 42-00, 111-104(d), 43-43, and 13-12, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 25, 2006” -(13) sheets; “Received May 23, 2006” -(2) sheets, and “Received July 10, 2006” -(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: nine stories, seven residential units, a maximum of 111’-2” in total height (without bulkheads), a maximum of 121’-3” in total height (with bulkheads), an 89’-1” street wall, a total FAR of 5.0, and a residential FAR of 5.0;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 11, 2006.

349-05-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Church of the Resurrection, owner.

SUBJECT – Application December 8, 2005 – Zoning Variance (bulk) pursuant to Z.R. §72-21 – to allow a proposed eight (8) story residential building with community facility use on the 1st and 2nd floors in an R7A Zoning District; contrary to Z.R. §23-145.

PREMISES AFFECTED – 325 East 101st Street, between First and Second Avenues, Block 1673, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 7, 2006, acting on Department of Buildings Application No. 10426593, reads, in pertinent part:

“Proposed floor area exceeds 4.0 FAR permitted under Section 23-145 of the ZR.

Proposed lot coverage exceeds 65% permitted under Section 23-145 of the ZR.

Proposed 2nd floor is not permitted rear yard obstruction under Section 24-33 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to

permit, on a site within an R7A zoning district, a proposed eight-story residential building with community facility use on the first and second floors, which does not comply with the maximum floor area ratio (“FAR”), lot coverage, and rear yard; and is contrary to ZR §§ 23-145 and 24-33; and

WHEREAS, the application is brought on behalf of the Church of the Resurrection (hereinafter, the “Church”); and

WHEREAS, the first- and second-floor community facility space will be occupied by the Church and an elementary school operated by the Church and the third through eighth floors will be occupied by 35 dwelling units; and

WHEREAS, the applicant proposes to construct an eight-story building with a residential floor area of 35,552 sq. ft., a community facility floor area of 12,432 sq. ft., and a total floor area of 47,984 sq. ft. (34,516 sq. ft. is the maximum permitted), a total FAR of 5.56 (4.0 is the maximum permitted), and a lot coverage of 87 percent at the second floor and 70 percent at the third through sixth floors (65 percent is the maximum permitted); and

WHEREAS, the proposed building’s first story will extend from the street line to a depth of 100’-1 ½”, the second story will extend from the street line to a depth of 87’-1 ½”, the third through sixth stories will extend from the street line to a depth of 70’-1 ½”, and the seventh and eighth floors will set back 15 ft. in the front and extend from the street line to a depth of 70’-1 ½”; and

WHEREAS, a public hearing was held on this application on April 4, 2006, after due notice by publication in the *City Record*, with a continued hearing on June 6, 2006, and then to decision on July 11, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 11, Manhattan, recommends disapproval of the application because it does not support the development of market rate housing on the site; and

WHEREAS, the subject premises is located on East 101st Street between First and Second avenues; and

WHEREAS, the lot is 85’-7” wide and 100’-1 ½” deep and has a total area of 8,629 sq. ft.; and

WHEREAS, the site is currently improved upon with a two-story church building that will be demolished; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the bedrock is located at a depth of 100 ft. from the surface; (2) the soil above the bedrock has poor load-bearing capacity; and (3) ground water is 8’-3” below grade; and

WHEREAS, the applicant submitted boring tests to substantiate these assertions; and

WHEREAS, the report accompanying the boring tests recommends that due to these conditions, any new building must be constructed on a series of deep piles, even though the piles cannot be anchored on bedrock due to the bedrock’s depth at the site; and

MINUTES

WHEREAS, additionally, the applicant represents that due to the discovery that there is a silt layer in one area, some of the piles will need to be deeper than originally anticipated; and

WHEREAS, the applicant examined the underground soil conditions within a 400-foot radius and found that they vary widely, but that few have as many conditions that might lead to flooding as the subject site; and

WHEREAS, specifically, the applicant represents that due to the proximity of two flood plains and the City's Coastal Zone, a cellar will likely be at risk of flooding; and

WHEREAS, accordingly, no cellar can be provided; and

WHEREAS, the Board notes that the current proposal results in an FAR of 5.56; since a cellar cannot be provided, the first floor of community facility use must be at grade and counted as floor area; and

WHEREAS, as to lot coverage, in order to accommodate the allowable floor area within the R7A contextual zoning district building envelope (i.e. to avoid violating maximum height limitations), the lot coverage is 87 percent at the second floor and 70 percent at floors three through six; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for a complying 4.0 FAR development and found that it did not result in a reasonable rate of return; and

WHEREAS, the applicant concluded that a complying scenario would not result in a reasonable return primarily because of high construction costs related to cellar construction, as well as additional incremental costs related to the foundation system, all of which relates to the above-mentioned soil and bedrock conditions; and

WHEREAS, at hearing, the Board requested a detailed analysis reflecting costs related to the subsurface conditions and the inability to provide a cellar; and

WHEREAS, the applicant submitted a financial analysis detailing the additional costs associated with the subsurface conditions; and

WHEREAS, based upon its review of the applicant's financial studies, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the site is located in an R7A zoning district that extends in the mid-blocks from East 99th to East 106th Streets, and that First and Second avenues are zoned R8A; and

WHEREAS, the applicant represents that the proposed project is considerably smaller in scale than adjacent

developments, with the subject block dominated by an 11-story residential complex; and

WHEREAS, additionally, other buildings on the block are in excess of ten stories and have more than 200 units each; and

WHEREAS, the applicant submitted photographs and a 400-ft. radius diagram to support these assertions; and

WHEREAS, the Board also observes that while the proposal requests additional FAR, the bulk is accommodated within the R7A contextual envelope, which minimizes any potential visual impact; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, the Board does not regard these conditions to be a self-created hardship; and

WHEREAS, initially, the applicant submitted a lesser-variance proposal of a 5.0 FAR building and determined that it was not financially viable; and

WHEREAS, at hearing, the Board asked the applicant to submit an analysis of a proposal that included a cellar that did not go below the water table, thus eliminating some of the increased construction costs while still decreasing the amount of total FAR; and

WHEREAS, the applicant explored a 4.0 FAR scenario with a cellar, and concluded that such a scenario was not feasible because of the substantial increase in construction costs related to building below grade and affecting the water table; and

WHEREAS, the applicant also analyzed a scenario with a basement which avoids construction below the water table and determined that the added costs for stairs and ramps would realize an even smaller return than the modest return for the proposal, and still not eliminate the need for the FAR waiver; and

WHEREAS, accordingly, the Board finds that the subject 5.56 FAR proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA040M, dated December 8, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

MINUTES

Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R7A zoning district, a proposed eight-story residential building with community facility use on the first and second floors, which is contrary to ZR §§ 24-145 and 24-33, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 27, 2006"- five (5) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of eight stories, a residential floor area of 35,552 sq. ft., a community facility floor area of 12,432 sq. ft., and a total floor area of 47,984 sq. ft., a total FAR of 5.56, a street wall height of 60 ft., total height of 80 ft., and a front setback of 15 ft. from a height of 60 ft., a rear setback of 30 ft. from a height of 19 ft., and lot coverage of 87 percent at the second floor and 70 percent at the third through sixth floors, all as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 11, 2006.

290-04-BZ

APPLICANT – Stuart A. Klein, Esq., for Alex Lokshin – Carroll Gardens, LLC, owner.

SUBJECT – Application August 20, 2004 – under Z.R. §72-21 to permit, in an R4 zoning district, the conversion of

an existing one-story warehouse building into a six-story and penthouse mixed-use residential/commercial building, which is contrary to Z.R. §§22-00, 23-141(b), 23-631(b), 23-222, 25-23, 23-45, and 23-462(a).

PREMISES AFFECTED – 341-349 Troy Avenue (a/k/a 1515 Carroll Street), Northeast corner of intersection of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

328-04-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application October 5, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a six story residential building, with twelve dwelling units, Use Group 2, located in an M1-1 zoning district, does not comply with zoning requirements for use, bulk and parking provisions, is contrary to Z.R. §42-00, §43-00 and §44-00.

PREMISES AFFECTED – 110 Franklin Avenue, between Park and Myrtle Avenues, Block 1898, Lots 49 and 50, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Chris Wright.

For Opposition: Charles O'Connor.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

334-04-BZ

APPLICANT – Sheldon Lobel, P.C., for L & L Realty, owner. Great Roosevelt Plaza Corporation, lessee.

SUBJECT – Application October 8, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a seven-story mixed-use building containing retail, general office and community facility space. No parking will be provided. The site is currently occupied by two commercial buildings which will be demolished as part loading of the proposed action. The site is located is located in a C4-2 zoning district. The proposal is contrary to Z.R. §36-21 (Required parking), §36-62 (Required loading berth), and §33-432(Sky exposure plane and setback requirements).

PREMISES AFFECTED – 135-28 Roosevelt Avenue, Roosevelt Avenue between Prince Street and Main Street. Block 5036, Lots 26(fka 25/26), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for adjourned hearing.

132-05-BZ

MINUTES

APPLICANT – Sheldon Lobel, P.C., for Sami Alboukai, owner.

SUBJECT – Application May 26, 2005 – Under Z.R. §73-622 to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per Z.R. §23-141, a rear yard less than the minimum per Z.R. §23-47 and a perimeter wall height greater than the maximum per Z.R. §23-31. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 220 West End Avenue, west side of West End Avenue between Oriental Boulevard and Esplanade, Block 8724, Lot 158, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Susan Klopper.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for decision, hearing closed.

182-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4 Park Avenue Associates, owner.

SUBJECT – Application August 4, 2005 – Under Z.R. §73-36 to allow the legalization of a physical culture establishment in a C5-3 zoning district.

PREMISES AFFECTED – 4 Park Avenue, between East 33rd and East 34th Streets, Block 863, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for decision, hearing closed.

303-05-BZ

APPLICANT – Eric Palatnik, P.C., for Adoo East 102 Street Corp., owner; Aspen Fitness, lessee.

SUBJECT – Application October 12, 2005 – under Z.R. §72-21 to permit the legalization of the second floor of an existing two story commercial structure for use as a physical culture establishment. Premises is located within the R8-B zoning district.

PREMISES AFFECTED – 428 East 75th Street, between

York and First Avenues, Block 1469, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for decision, hearing closed.

351-05-BZ

APPLICANT – The Law Offices of Howard Goldman/Emily Simons, Esq., for Atlas Packaging Solutions Holding Co., owner.

SUBJECT – Application December 14, 2005 – Variance ZR §72-21 to allow a proposed four (4) story residential building containing eight (8) dwelling units in an M2-1 Zoning District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 146 Conover Street, south facing block of Conover Street, between King and Sullivan Streets, Block front of Conover Street, between King and Sullivan Streets. Block 554, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Emily Simons and Chris Wright.

For Opposition: Robinson Hernadez.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

22-06-BZ

APPLICANT – Harold Weinberg, P.E., for Margret Riordan, owner.

SUBJECT – Application February 9, 2006 – under Z.R. §72-21 to permit the enlargement of an existing single family dwelling on a pre-existing undersized lot. The proposed enlargement increases the degree of non-compliance at the front yard, rear yard and side yards; (Z.R. §23-45, §23-47 and §23-48) the proposed enlargement also exceeds the allowable setback and is contrary to Z.R. §23-631. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 8 Gotham Avenue, between Fane Court, south side and Shell Bank Creek, Block 8883, Lot 978, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

MINUTES

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for decision, hearing closed.

131-05-BZ

APPLICANT – Law Office of Vincent L. Petraro, for Delco Properties, LLC, owner.

SUBJECT – Application Variance application under Z.R. § 72-21 to permit a five-story retail/banquet facility/office building of 112,137 square feet and up to 276 attended parking spaces on the two cellar levels. The site is located in a C4-3 zoning district. The proposal is contrary to Z.R. §§33-122, 33-432, 36-21, 36-62, and 32-21. The variance waivers requested relate to floor area, front wall height, number of parking spaces, number of loading berths, and the distance from a residence district. There are two existing commercial buildings on the site which will be demolished as part of the proposed action.

PREMISES AFFECTED – 72-01/72-11 Roosevelt Avenue, 37-61/69 72nd Street and 72-18 Broadway, corner of 72nd Street and Broadway, Block 1283, Lot 72, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Steven Simicich.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

44-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Philip & Laura Tuffnell, owners.

SUBJECT – Application March 14, 2006 – Pursuant to ZR 72-21 Variance for the vertical enlargement of an existing single family residence which exceeds the maximum permitted floor area, ZR §23-141 and does not provide the required side yard, 23-461.

PREMISES AFFECTED – 150-24 18th Avenue, South side of 18th Avenue, 215 east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug and Laura Tuffnell.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for decision, hearing closed.

46-06-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for West 55th Street Building, LLC, owner; Club H. NY, LLC, lessee.

SUBJECT – Application March 17, 2006 – Special Permit pursuant to Z.R. §§ 73-03 and 73-36 to allow the proposed Physical Culture Establishment on the first floor and mezzanine of the subject 12-story commercial building. The

first floor and mezzanine are currently vacant. The subject premises is located in a C6-2 zoning district within the Special Clinton District.

PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for decision, hearing closed.

74-06-BZ

APPLICANT – Sheldon Lobel, P.C., for William Guarinello, owner.

SUBJECT – Application April 24, 2006 – Special Permit pursuant to ZR §73-622 for the enlargement of single family residence which exceeds the allowable floor area ratio, lot coverage and open space as per ZR §32-141, less than the minimum side yards as per ZR §23-461 and less than minimum rear yard as per ZR §34-47. This special permit application also purposes to convert from a one family residence to a two family residence.

PREMISES AFFECTED – 1416 80th Street, south side of 80th Street, Block 6281, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for decision, hearing closed.

76-06-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 150 East 58th Street, LLC/Vornado Realty, owner; Sitaras Fitness, LLC, lessee.

SUBJECT – Application April 26, 2006 – Special Permit under Z.R. §73-36 - Proposed physical cultural establishment to be located on a portion of the 11th and 12th floor of a thirty - nine story commercial building. Premises is located within an C5-2 Zoning District.

PREMISES AFFECTED – 150 East 58th Street, south side of East 58th Street, 85 feet east of the corner formed by the intersection of Lexington Avenue and East 58th Street, Block 1312, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Lori Cuisinier.

THE VOTE TO CLOSE HEARING –

MINUTES

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and
Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to August 8,
2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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July 27, 2006

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New Case Filed Up to July 18, 2006

153-06-A

159 West 12th Street, Seventh Avenue and Avenue of the Americas, Block 608, Lot 69, Borough of **Manhattan**, **Community Board: 14**. Appeal - Proposed enlargement.

154-06-A

357 15th Street, North side of 15th, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of **Brooklyn**, **Community Board: 6**. Appeal - To allow completion of major development commenced prior to enactment of zoning map amendment.

155-06-A

357 15th Street, North side of 15th, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of **Brooklyn**, **Community Board: 6**. Appeal - To allow completion of major development commenced prior to enactment of zoning map amendment.

156-06-BZ

267-04 83rd Avenue, South east corner of 267th Street, Block 8779, Lot 41, Borough of **Queens**, **Community Board: 13**. Under Z.R. §72-21 - To legalize portion of second floor encroaching into one of front yards.

157-06-BZ

28-56 Steinway, North west corner of Steinway Street and 30th Avenue., Block 662, Lot 41, Borough of **Queens**, **Community Board: 1**. Special permit - To legalize an enlargement to a previously approved physical culture establishment on the first and second floor of an existing three story commercial building.

158-06-BZ

1410 East 22nd Street, West side of East 22nd Street 380' south of Avenue M., Block 7677, Lot 66, Borough of **Brooklyn**, **Community Board: 14**. Special Permit: under Z.R. §73-622 - Extension of Time.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

AUGUST 22, 2006, 10 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday morning*, August 22, 2006, at 10 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

308-64-BZ

APPLICANT – Sheldon Lobel, P.C., for 30 East 65th Street Corporation, owner.

SUBJECT – Application June 2, 2006 - Application is a reopening for an Extension of Term/Waiver of a variance for the use of 15 surplus attended transient parking spaces within a multiple dwelling presently located in a C5-1/R8/MP zoning district. The original grant of the variance by the Board of Standards and Appeals was made pursuant to Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED - 747-751 Madison Avenue, a/k/a 30-38 East 65th Street, Northeast corner of East 65th Street, Block 1379, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #8M

670-83-BZ

APPLICANT – Eric Palatnik, P.C., for Brett Adams and Paul Reisch, owner.

SUBJECT – Application July 10, 2006 - Pursuant to ZR 72-01 & 72-22 to Re-open and Amend the previous BSA resolution for the Extension of Term for a non-conforming UG6 (Talent Agency in the basement of a Residential Building for ten years which expired on May 22, 2005. The application is also seeking a Waiver of the Rules of Practice and Procedure for filing more than a year after the expiration of the term.

The premise is located in an R8 (Special Clinton District) zoning district.

PREMISES AFFECTED – 488 West 44th Street, Between 9th and 10th Avenues, Block 1053, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #4M

331-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Sean Porter, owner.

SUBJECT – Application April 20, 2006 - Application seeks an extension of term for a special permit under section 73-244 of the zoning resolution which permitted the operation of an eating and drinking establishment with entertainment and dancing with a capacity of more than 200 persons at the premises. In addition the application seeks a waiver of the Board's Rules and Procedure due the expiration of the term on April 20, 2005. The site is located in a C2-3/R6 zoning district.

PREMISES AFFECTED – 1426-1428 Fulton Street,

Southern side of Fulton Street between Brooklyn and Kingston Avenues, Block 1863, Lot 9, 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

149-01-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for Jane Street Realty, LLC, owner.

SUBJECT - Application June 19, 2006 - This application is to Reopen and Extend the Time to Complete Construction for the inclusion of the first and cellar floor areas of an existing six-story building for residential use and to obtain a Certificate of Occupancy which expired on June 18, 2006. The premise is located in an R6 zoning district.

PREMISES AFFECTED – 88-90 Jane Street, North side of West 12th Street, between Washington Street and Greenwich Street, Block 641, Lot 1001-1006, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

332-05-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for LMC Custom Homes, owner.

SUBJECT – Application November 17, 2005 - Application to permit the construction of two one family dwellings within the bed of a mapped street (Enfield Place). Contrary to General City Law Section 35 . Premises is located in an R4 Zoning district.

PREMISES AFFECTED – 72 Summit Avenue, Block 951, Lot p/o 19 (tent 25 & 27), Borough of Staten Island

COMMUNITY BOARD #2SI

333-05-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for LMC Custom Homes, owner.

SUBJECT – Application November 17, 2005 - Application to permit the construction of two one family dwellings within the bed of a mapped street (Enfield Place). Contrary to General City Law Section 35 . Premises is located in an R4 Zoning district.

PREMISES AFFECTED – 74 Summit Avenue, Block 951, Lot p/o 19 (tent 25 & 27), Borough of Staten Island

COMMUNITY BOARD #2SI

346-05-A

APPLICANT – Joseph A. Sherry, for Abdo Alkaifi, owner.

SUBJECT – Application December 6, 2005 - Application to

CALENDAR

permit an enlargement of a commercial structure located partially in the bed of a mapped street (Beach 52nd Street) contrary to Section 35 of the General City Law . Premises is located within the C8-1 Zoning district.

PREMISES AFFECTED - 51-17 Rockaway Beach Boulevard, S/S 0' East of Beach 52nd Street, Block 15857, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

57-06-A

APPLICANT – Willy C. Yuin, R.A., for Carmine Lacertosa, owner.

SUBJECT – Application March 27, 2006 - Proposal to construct a two story commercial building not fronting on a mapped street contrary to Genral City Law Section 36. Premises is located within an M1-1 Zoning District.

PREMISES AFFECTED - 141,143,145,147 Storer Avenue, South of Storer Avenue, 101.57' west of the corner of Carlin Street & Storer Avenue, Block 7311, Lot 35, Borough of Staten Island.

COMMUNITY BOARD #3SI

AUGUST 22, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday afternoon*, August 22, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

288-05-BZ

APPLICANT – Harold Weinberg, P.E., for Maria Musacchio, owner.

SUBJECT – Application September 16, 2005 – Pursuant to ZR §73-622 Special Permit for an In-Part Legalization to a single family home which exceeds the allowable floor area ratio and is less than the allowable open space, 23-141 and exceeds the maximum allowable permieter wall height, 23-631. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 1060 82nd Street, South side, 197'3" west of 11th Avenue, between 10th Avenue, Block 6012, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #10BK

336-05-BZ

APPLICANT – Stuart A. Klein, Esq., for Rotunda Realty Corporation, owner; CPM Enterprises, LLC, lessee.

SUBJECT – Application November 23, 2005 – Special

permit application under Z.R. §73-36 to permit a Physical Culture Establishment in the subject building, occupying the third and a portion of the second floor. The premise is located in M1-5B zoning district. The proposal is contrary to Z.R. §42-00.

PREMISES AFFECTED – 495 Broadway, a/k/a 66-68 Mercer Street, west side of Broadway between Spring and Broome Streets, Block 484, Lot 24, Borough of Manhattan
COMMUNITY BOARD #2M

56-06-BZ

APPLICANT - The Law Office of Fredrick A. Becker, for Suri Blatt and Steven Blatt, owner.

SUBJECT – Application March 27, 2006 - Pursuant to ZR 73-622 Special Permit for the enlargement of an existing one family residence which exceeds the maximum allowed floor area and decreases the minimum allowed open space as per ZR 23-141 and has less than the minimum required rear yard as per ZR 23-47.

PREMISES AFFECTED – 1060 East 24th Street, East 24th Street between Avenue J and Avenue K, Block 7606, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

72-06-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for SL Green Realty Corporation, owner; Equinox One Park Avenue, Incorporated, lessee.

SUBJECT – Application April 19, 2006 - Special Permit pursuant to Z.R.73-36 to allow the proposed PCE within a portion of the first floor and the entire second floor of the existing 18-story commercial building. The premise is located in a C5-3 and C6-1 zoning district. The proposal is contrary to Z.R. Section 32-10.

PREMISES AFFECTED – 1 Park Avenue, a/k/a 101/17 East 32nd Street and East 33rd Street, East south of Park Avenue between E. 32nd Street and East 33rd Street, Block 888, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

94-06-BZ

APPLICANT – Dennis D. Dell'Angelo, for David & Rosa Soibelman, owner.

SUBJECT – Application May 12, 2006 - Pursuant to ZR 73-622 - Special Permit to construct a three story enlargement to an existing single family home creating non-complying conditions contrary to ZR 23-141 for open space and floor area ratio, ZR 23-47 less than the required rear yard and ZR 23-48 for less than the required side yards. The premise is located in an R-2 zoning district.

PREMISES AFFECTED - 1221 East 29th Street, East side of East 29th Street, 150' South of Avenue L, Block 7647, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

113-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Columbia University in the City of New York, lessee.

SUBJECT – Application June 6, 2006 - Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed 13-story academic building to be constructed on an existing university campus (Columbia University). The project requires lot coverage and height and setback waivers and is contrary to Z.R. sections 24-11 and 24-522.

PREMISES AFFECTED – 3030 Broadway, Broadway, Amsterdam Avenue, West 116th and West 120th Streets, Block 1973, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeffrey Mulligan, Executive Director.

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**REGULAR MEETING
TUESDAY MORNING, JULY 18, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar, and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, May 2, 2006 as printed in the bulletin of May 11, 200, Volume 91, No. 19. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

364-36-BZ, Vol. II

APPLICANT – Joseph P. Morsellino, for Dominick Tricarico & Est. of P. Tricarico, owner.

SUBJECT – Application July 13, 2005 – Extension of Term/Waiver of a Variance which expired on February 11, 2005 for an additional 15 year term of an automotive service station. The premise is located in a C1-4 and R6B zoning district.

PREMISES AFFECTED – 31-70 31st Street, 31st Street and Broadway, Block 589, Lot 67, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

Adopted by the Board of the Standards and Appeals, July 18, 2006.

374-71-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Evelyn DiBenedetto, owner; Star Toyota, lessee.

SUBJECT – Application February 12, 2004 – Pursuant to Z.R. §§72-01 and 72-22 for an extension of term of a variance permitting an automobile showroom with open display of new and used cars (UG16) in a C2-2 (R3-2) district. The application also seeks an amendment to permit accessory customer and employee parking in the previously unused vacant portion of the premises.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 6269, Lots 14 and 20, located on the North West corner of Northern Boulevard and the Clearview Expressway, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and a (1) amendment to a previously granted variance which permitted an automobile show room with open display of new and used cars; (2) the restoration of a previously approved accessory parking lot; and (3) an extension of term of the grant which expired on February 15, 2002; and

WHEREAS, a public hearing was held on this application on January 31, 2006, after due notice by publication in *The City Record*, with continued hearings on March 14, 2006, April 25, 2006, May 16, 2006 and June 20, 2006, and then to decision on July 18, 2006; and

WHEREAS, Community Board 11, Queens, recommends approval of this application on condition that a wrought iron fence be installed along the front of the site and that a maximum of 15 vehicles be allowed to be parked on the area currently used for the open display of new and used vehicles in front of the building; and

WHEREAS, City Council Member Tony Avella recommends approval with a limitation on the term for two years; and

WHEREAS, the Auburndale Improvement Association suggested the following conditions: that a permanent wrought iron fence be installed to protect the sidewalk and that there be a 15 vehicle maximum on the display lot; and

WHEREAS, certain community members appeared in opposition, citing concerns about the storage and washing of cars on the sidewalk, lack of compliance with curb cut conditions, and the need for a fence rather than bollards along the perimeter of the property; and

WHEREAS, the premises is located at the northwest corner of the intersection of Northern Boulevard and the Clearview Expressway, with additional frontage on 205th Street; and

WHEREAS, the site is a 9,870 sq. ft. lot located within an C2-2 (R3-2) zoning district and is improved upon with an automobile showroom, operating as Star Toyota, with open display of new and used cars, and a 4,969 sq. ft. accessory parking lot; and

WHEREAS, specifically, the showroom and display area front on Northern Boulevard and the accessory parking lot is at the rear, within the R3-2 zoning district, fronting on the Clearview Expressway; and

WHEREAS, the existing conditions at the site include one curb cut on the 205th Street frontage, three curb cuts on the Northern Boulevard frontage, and two curb cuts on the Clearview Expressway frontage; and

WHEREAS, the accessory parking lot and the sides of the showroom and display area are enclosed with chain link fence; the front of the site is demarcated with removable bollards; and

WHEREAS, the Board has exercised jurisdiction over the

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subject site since July 15, 1975 when, under the subject calendar, the Board granted an application to permit the discontinuance of an automotive service station and the change in use to the sales and display of new and used cars, in addition to the parking and storage of cars and accessory parking on the vacant portion of the lot; and

WHEREAS, subsequently, the grant was extended and amended several times, including on November 17, 1982, when the term was extended for five years and the accessory parking lot was to be discontinued; and

WHEREAS, most recently, on December 7, 1993, the Board granted an extension of term to expire on February 15, 2002; and

WHEREAS, the applicant seeks an extension of term for ten years; and

WHEREAS, in response to the community's concern about parking on neighboring residential streets, the applicant requests an amendment to restore the previously-approved accessory parking use, to be limited to employee and customer parking in the accessory parking lot; and

WHEREAS, at hearing, the Board expressed concern about the following general site conditions: (1) the number of cars that could be feasibly parked in the display lot, and (2) the use and safety of the sidewalk; and

WHEREAS, at hearing, the Board asked the applicant how many cars would actually be parked within the display area lot; and

WHEREAS, initially, the applicant said that approximately 30 cars would be parked on that portion of the lot; and

WHEREAS, the Board requested that the applicant reduce the number of spaces because the lot could not support the display of so many vehicles; and

WHEREAS, the applicant responded that due to there being 21 models of Toyota automobiles, it is necessary to display a minimum of 26 cars; and

WHEREAS, subsequently, the applicant revised the plans to the current version which allocates spaces for 22 cars on the display lot; and

WHEREAS, the Board has reviewed and is satisfied with the revised layout, since the size of the display area can accommodate this amount of vehicles; and

WHEREAS, as to the second issue, the Board asked the applicant what measures had been taken to eliminate the prior improper use of the sidewalk for automobile sales and washing and to maintain safe traffic conditions on the site; and

WHEREAS, the applicant represents that, since the lot was repaved, sales of vehicles has not occurred on the sidewalk and the sidewalk is not used for washing cars; and

WHEREAS, the Board expressed concern that the bollards, which can be lowered, do not provide enough of a barrier between the display area and the sidewalk and asked the applicant whether they could be replaced with a fence; and

WHEREAS, the Board suggested that a fence would help provide a more clearly defined entrance and exit path and confine the movement of cars to a smaller area; and

WHEREAS, additionally, the Board suggested that a fence at the 205th Street and Clearview Expressway sides of the site would eliminate direct access onto the residential streets and restrict vehicular ingress and egress to the Northern Boulevard frontage; and

WHEREAS, in response, the applicant noted that the removable bollard system requires that, at most, one vehicle would have to be moved to let another out and that a fencing system around the entire site would require more vehicles to be moved, leading to increased traffic and vehicle parking on the street; and

WHEREAS, further, the applicant responded that the bollards were necessary to provide visibility and better customer access to the cars; and

WHEREAS, the Board suggested that, in lieu of a fence at the Northern Boulevard frontage, some bollards should be fixed in place and should be taller than those initially proposed; and

WHEREAS, at the Board's suggestion, the applicant agreed to install bollards that are three feet tall; and

WHEREAS, the Board also expressed concern that the site's six curb cuts are excessive and contribute to the noted sidewalk safety and traffic problems; and

WHEREAS, the Board suggested that the applicant remove the curb cut on 205th Street and the second curb cut on the Clearview Expressway so that all access, other than to the accessory lot, would be from Northern Boulevard; and

WHEREAS, the applicant agreed to remove the curb cuts from 205th Street and the southernmost one on the Clearview Expressway and to provide three-ft. tall wrought iron fencing at these points; and

WHEREAS, the Board also expressed the following concerns about the accessory parking lot: (1) the number of parking spaces, (2) screening and lighting, and (3) the use and hours of operation; and

WHEREAS, as to the accessory parking lot, the Board asked the applicant how many parking spaces would be allocated to the lot; and

WHEREAS, the applicant responded that there would be a maximum of 16 parking spaces on the lot, based on the accepted 300 sq. ft. per space standard; and

WHEREAS, the Board asked the applicant to ensure that the lot would be properly screened from the adjacent residences and that any lighting would be directed away from them; and

WHEREAS, the applicant responded that there would be a 4'-0" opaque fence on top of a 2'-0" retaining wall along the north and west sides of the lot and a 6'-0" tall chain link fence with a single gate at the Clearview Expressway side of the lot; and

WHEREAS, additionally, to address neighbors' concerns about the presence of two dumpsters at the site, the applicant represents that there will now be one dumpster and it will be in the back of the building; and

WHEREAS, the Board inquired about the operation of the accessory lot in relationship to the rest of the site; and

WHEREAS, the applicant responded that the use would be very limited and would be reserved to employees and

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customers; and

WHEREAS, further, the applicant stated that the gate to this lot would be closed and locked after business hours; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested extension of term and amendments are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on July 15, 1975, as subsequently extended, so that as amended this portion of the resolution shall read: "to permit the restoration of the previously-approved accessory parking use, to be limited to employee and customer parking, and to extend the term for an additional period of five years from the date of this grant, to expire on July 18, 2011, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received July 6, 2006'-(1) sheet; and *on further condition*:

THAT the term of this grant shall be for five years, to expire on July 18, 2011;

THAT a maximum of 22 automobiles shall be parked within the sale and display lot;

THAT a maximum of 16 automobiles shall be parked within the accessory parking lot;

THAT the use of the accessory parking lot shall be limited to employees and customers;

THAT the accessory parking lot shall be locked and empty during non-business hours;

THAT all exterior lighting shall be directed away from residences;

THAT 3'-0" tall bollards shall be installed and maintained along the Northern Boulevard frontage of the site as illustrated on the BSA-approved plans;

THAT a 3'-0" tall wrought iron fence shall be installed and maintained along the two corners of the site as illustrated on the BSA-approved plans;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review and approve the layout of the onsite parking;

THAT prior to the issuance of any building permits, the applicant shall submit to DOB a survey which indicates the property lines;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

(DOB Application No. 401815620)

Adopted by the Board of Standards and Appeals, July 18,

2006.

169-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for ZKZ Associates, LP, owner; TSI West 80 Inc., dba New York Sports Club, lessee.

SUBJECT – Application October 21, 2005 – Pursuant to ZR §73-36 for the Extension of Term for a Physical Culture Establishment (New York Sports Club) which expired on May 17, 2004.

PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on May 17, 2004; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, and then to decision on July 18, 2006; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the subject premises is located at the southwest corner of West 80th Street and Broadway; and

WHEREAS, the site is occupied by two adjoining five-story commercial buildings; and

WHEREAS, the PCE is operated as a New York Sports Club; and

WHEREAS, on May 17, 1994, the Board granted a special permit pursuant to ZR § 73-36, to permit, in a C4-6A zoning district, the operation of a PCE in the cellar through fifth floors of the building at 248 West 80th Street, and the second floor of the building at 246 West 80th Street; and

WHEREAS, subsequently, the grant was re-opened and amended to allow for an expansion, a modification of the hours of operation, and an extension of the term; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, accordingly, the Board finds that a ten-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated May 17, 1994, so that

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as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received July 14, 2006"–(8) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from May 17, 2004, expiring May 17, 2014;

THAT the hours of operation shall be Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 10:00 p.m.;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, July 18, 2006.

227-98-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for 41st Street Realty, LLC, owner; Gem Foods of Brooklyn, lessee.

SUBJECT – Application July 19, 2005 – Extension of term of a Special Permit for an eating and drinking establishment with an accessory drive-through facility. The premise is located in a C1-3(R-6) zoning district.

PREMISES AFFECTED – 41-01 4th Avenue, aka 400 41st Street, southeast corner of 4th Avenue and 41st Street, Block 719, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of the term of the special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on May 18, 2004; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, and then to decision on July 18, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the site is located on the northwest corner of Fourth Avenue and 41st Street, within a C1-3(R6) zoning district, has a lot area of 10,000 sq. ft., and is occupied by an existing eating and drinking establishment (a Burger King fast food restaurant), with a drive-through facility with a ten vehicle capacity reservoir, and 13 accessory parking spaces; and

WHEREAS, on May 18, 1999, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, authorizing the drive-through facility for the restaurant, for a period of five years; and

WHEREAS, the applicant requests a ten-year extension of term; and

WHEREAS, in its application, the applicant also identified differences between the parking and traffic circulation as shown on the BSA-approved plans and those that are actually in existence at the site; and

WHEREAS, the applicant attributed these deviations to operational problems that arose after the original construction; and

WHEREAS, specifically, the applicant noted the following deviations: the removal of a curb at the drive-through lane, a decrease in the parking aisle width from 24'-0" to 22'-0", and the increase in the width of the drive-through lane from 9'-2" to 11'-2"; and

WHEREAS, at hearing, the applicant agreed to return the traffic circulation conditions to what was approved by the Board, except that the curb would not be replaced; and

WHEREAS, the Board observed that the removal of the curb improved the safety of the traffic circulation pattern; and

WHEREAS, accordingly, the applicant submitted revised drawings that reflect the increase in the parking aisle width to 24'-0", the reduction in the width of the drive-through lane to 9'-2", and the removal of the curb; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term is appropriate, so long as the restaurant complies with all relevant conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, said resolution having been adopted on May 18, 1999, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from May 18, 2004, *on condition* that all work and site conditions shall comply with drawings marked "Received May 16, 2006"–(2) sheets, and "Received July 6, 2006" –(1) sheet ; and *on further condition*:

THAT the term of this grant shall expire on May 18, 2009;

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior

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approval of the Board;

THAT the hours of operation of the drive-through shall be limited to 7:00 a.m. to 12:00 a.m., daily;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB App. No. 300717552)

Adopted by the Board of Standards and Appeals, July 18, 2006.

121-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Harbor Associates, owner.

SUBJECT – Application November 2, 2005 – Pursuant to ZR 73-11 for the proposed Extension of Term of Special Permit and Extension of Time to obtain a Certificate of Occupancy for a Physical culture Establishment (Harbor Fitness Club) which expired on January 1, 2006 is contrary to ZR32-10.

PREMISES AFFECTED – 9215 4th Avenue, a/k/a 9216 5th Avenue, south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a previously issued special permit term for the prior grant for a physical culture center (PCE), which expired on January 1, 2006 and an extension of time to obtain a new certificate of occupancy; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, and then to decision on July 18, 2006; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject 13,855 sq. ft. lot fronts both Fourth and Fifth Avenues and is located south of the intersection

with 92nd Street; and

WHEREAS, the site is located within a C8-2 (BR) zoning district and is improved upon with a two-story with mezzanine and cellar building occupied by a PCE; and

WHEREAS, the PCE is operated as a Harbor Fitness Club; and

WHEREAS, the Board has exercised jurisdiction over both the subject premises since November 26, 2002, when the Board granted an application to permit the legalization of a PCE and the completion of additional required work, including improvements related to a compliance with Local Law 58/87 and the installation of fire safety equipment; and

WHEREAS, the applicant notes that since the prior grant, the site has been re-zoned from C8-1 (BR) to C8-2 (BR), but that this re-zoning does not impact the grant or the subject application; and

WHEREAS, in June 2004, the owner received a violation from the Fire Department for failing to complete the required work; and

WHEREAS, the applicant represents that the required work was completed in the summer of 2005, but that a new certificate of occupancy was not obtained prior to the January 1, 2006 expiration of the grant; and

WHEREAS, the applicant now seeks an extension of term of the special permit for ten years and an extension of time for six months from the date of this grant to obtain a new certificate of occupancy; and

WHEREAS, the Board notes that the Fire Department has approved the fire safety equipment and that there are no changes to the approved plans; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of term and extension of time to obtain a certificate of occupancy.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on November 26, 2002, under the subject calendar number, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on January 1, 2016, and an extension of time to obtain a certificate of occupancy for an additional period of one year from the prior grant’s expiration, to expire on January 1, 2007, *on condition*: that all work and site conditions shall comply with drawings marked “Received July 6, 2006”–(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on January 1, 2016;

THAT a new certificate of occupancy shall be obtained by January 1, 2007;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 301295140)

Adopted by the Board of Standards and Appeals, July 18, 2006.

413-50-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application October 12, 2005 – Pursuant to ZR §11-411 and §11-412 for an Extension of Term of a Gasoline Service Station-UG 16 (BP North America) for ten years which expired on November 18, 2005. This instant application is also for an Amendment to legalize modifications to the previously approved signage on site.

PREMISES AFFECTED – 691/703 East 149th Street, northwest corner of Jackson Avenue, Block 2623, Lot 140, Borough of The Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

405-71-BZ

APPLICANT – Sheldon Lobel, P.C., for Sarlanis Enterprises, LLC, owner; Amerada Hess Corporation, lessee.

SUBJECT – Application April 21, 2006 – Pursuant to ZR §73-11 for the proposed redevelopment of an existing automotive service station (Shell Station) with accessory uses (UG16) to a Gasoline Service Station (Hess) with an accessory convenience store (UG16).

PREMISES AFFECTED – 3355 East Tremont Avenue, eastern side of East Tremont Avenue at the intersection with Baisley Avenue, Block 5311, Lot 7, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Richard Lobel and Mark Pilata.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

286-79-BZ

APPLICANT – Walter T. Gorman, P.E., for Amerada Hess Corp., owner.

SUBJECT – Application April 13, 2006 – Proposed Extension of Term for an automobile service station located

in a C1-2/R2 zoning district. The application also seeks to waive the Board's rules of practice and procedure and extend the term of the special permit for a period of ten (10) years which expired on June 19, 2004 and extend it to June 19, 2014.

PREMISES AFFECTED – 219-28 to 219-38 Hillside Avenue, southeast corner of Springfield Boulevard, Block 10680, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for decision, hearing closed.

182-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2465 Broadway Associates, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar, first and second floors of a commercial building. This is a companion case to 183-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2465/73 Broadway, west Broadway, 50' south of intersection with 92nd Street, Block 1239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for continued hearing.

183-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Haymes Broadway, LLC, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar of a commercial building. This is a companion case to 182-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2473/5 Broadway, southwest corner of Broadway, and West 92nd Street, Block 1239, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for continued hearing.

269-98-BZ

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APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application April 12, 2006 – Pursuant to ZR §72-01 for the Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for the construction of a two story building for commercial use (Retail UG6) in a residential use district.

PREMISES AFFECTED – 70 East 184th Street, aka 2363 Morris Avenue, south side of East 184th Street, corner formed by the intersection of Morris Avenue, Block 3183, Lot 42, Borough of The Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Mothiur Rahman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for decision, hearing closed.

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for George Marinello, owner; Wendy’s Restaurant, lessee.

SUBJECT – Application January 12, 2006 – Pursuant to Z.R. §§72-21 and 72-22 for the extension of term for ten years for an accessory drive thru facility at an eating and drinking establishment (Wendy’s) which one-year term expired February 1, 2006. An amendment is also proposed to extend the hours of operation of the accessory drive-thru facility to operate until 4 a.m. daily. The premise is located in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, between 91st Street and Remsen Avenue, Block 8108, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD#17BK

APPEARANCES –

For Applicant: Eric Palatnik and James Shephard.

For Opposition: Esme Trotman and Maria Shake.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

182-04-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Chelsea Village Associates, owner; Harmic III, LLC, lessee.

SUBJECT – Application January 17, 2006 – Reopening for an amendment permit proposed eating and drinking establishment (comedy theater), Use Group 12, on a zoning lot, split between a C6-2A and R8B zoning district, of which a portion is located in the R8B district, is contrary to Z.R. §22-10.

PREMISES AFFECTED – 351/53 West 14th Street, north side, between Eighth and Ninth Avenues, Block 738, Lot 8,

Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Steve Sinacori.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for decision, hearing closed.

263-03-A

APPLICANT – John W. Carroll, Wolfson & Carroll, for Ben Bobker, owner.

SUBJECT – Application August 20, 2003 – An administrative appeal challenging the Department of Buildings’ final determination dated August 13, 2003, in which the Department refused to revoke the certificate of occupancy, on the basis that the applicant had satisfied all objections regarding said premises.

PREMISES AFFECTED – 1638 Eighth Avenue, west side, 110-5’ east of Prospect Avenue, Block 1112, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: John Carroll.

ACTION OF THE BOARD – Appeal dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal which, when filed on August 20, 2003, challenged a Department of Buildings determination dated August 13, 2003, refusing to revoke a building permit issued under DOB Application No. 301172184 on July 21, 2003 (the “Permit”); and

WHEREAS, a public hearing was held on this appeal on April 25, 2006 after due notice by publication in *The City Record*, with continued hearings on June 6, 2006 and June, 20, 2006, and then to decision on July 18, 2006; and

WHEREAS, the applicant states that the subject premises fronts on the south side of 15th Street between Seventh and Eighth Avenues, on a 7,656 sq. ft. site, with frontage of approximately 75 ft. and a depth of 100 ft.; and

WHEREAS, under the Permit, the developer of the site seeks to construct a new two-story residential building with a cellar and basement; and

WHEREAS, as to the history of work at the site, demolition activities were authorized from under Demolition Permit No. 301321399 on April 17, 2002, through February 11, 2003; and

WHEREAS, the Permit, which authorized excavation and construction, was in effect during an initial term of June 11, 2002 through August 13, 2002, and was renewed by DOB for eight other discrete terms; and

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WHEREAS, DOB notes that since these terms were not all consecutive or overlapping, there were periods of time between expiration and renewal during which the Permit was not in effect; and

WHEREAS, shoring work, including the reinforcement and stabilization of the excavated area, was authorized for an initial term of April 22, 2004 through February 11, 2005 and for a renewal term of February 16, 2005 through February 11, 2006, under Alteration Type II Permit No. 301799105; and

WHEREAS, appellant initially challenged DOB's issuance of the Permit, asserting that the approved plans violated the following zoning and Building Code ("BC") provisions: (1) ZR § 23-63(e) - building height; (2) ZR § 23-462 - side yard; (3) BC § 27-662 - soil investigation; (4) ZR § 12-10 ("cellar"); and (5) BC §§ 27-901(k) and 27-1029 - disposal of storm water and prevention of damage due to changes in ground water level; and

WHEREAS, subsequent to the filing of the appeal, DOB issued objections related to the Permit, apparently agreeing that some of appellant's concerns had merit; and

WHEREAS, specifically, on March 17, 2004, DOB issued a letter of intent to revoke the Permit based on concerns that the application did not comply with: (1) prescribed building height per ZR § 23-631(e) and ZR § 12-10 ("base plane"); (2) disposal of storm water and investigation of damage to adjacent buildings caused by changes in ground water level per BC §§ 27-901(k) and 27-1029, respectively; and (3) required "adequate adjacent space" outside basement apartments per Multiple Dwelling Law § 34(6); and

WHEREAS, the revocation of the Permit was never executed as the cited concerns were resolved by the developer, through the submission of revised plans, at DOB; and

WHEREAS, the developer was successful, and none of the issues originally raised in the initial appeal papers are unresolved, a fact conceded by appellant; and

WHEREAS, however, appellant continued to raise new issues during the hearing process, such as a disparity between the submitted architectural and structural plans; and

WHEREAS, DOB also note this disparity, and by letter dated May 11, 2006, it again notified the owner of its intent to revoke the Permit because the submitted structural drawings did not correspond with the amended architectural drawings; and

WHEREAS, the developer submitted revised plans to DOB addressing this disparity, which were subsequently approved; and

WHEREAS, appellant was afforded the opportunity to review the revised plans, and, in a submission dated July 5, 2006, opines, in sum and substance, that the parking plan for the proposed development is unusable and unlawful because it does not provide: (1) sufficient space for cars to enter into certain spaces; and (2) sufficient turning space at various locations within the garage; and

WHEREAS, DOB, however, has approved these plans, and the appellant has not cited to any Building Code or ZR provisions that the current parking layout violates; and

WHEREAS, accordingly, since all outstanding issues

identified in the Final Determination, as well as those raised during the hearing process, have been resolved, the Board finds that the instant appeal is now moot and may be appropriately dismissed; and

WHEREAS, the Board notes that at the time of initial filing of the instant appeal, the premises was within an R5 zoning district; and

WHEREAS, however, the site has since been rezoned to an R5B zoning district; the proposed development does not comply with certain of the R5B district regulations; and

WHEREAS, because construction had commenced but not been completed as of the date of this rezoning, the owner of the premises also filed applications for the right to continue construction, pursuant to both ZR § 11-331 and the common law of vested rights, under BSA Cal. Nos. 361-05-BZY and 366-05-A; and

WHEREAS, the appellant in the instant appeal is also appearing in opposition to these vested rights cases; and

WHEREAS, the Board's decision as to the instant appeal is without prejudice to the future resolution of the vested rights cases.

Therefore it is Resolved that this appeal, which challenges the issuance of DOB Permit No. 301172184, is hereby dismissed as moot.

Adopted by the Board of Standards and Appeals, July 18, 2006.

222-04-A thru 224-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, & Spector, LLC for Dalip Karpuzi, owner.

SUBJECT – Application June 1, 2004 – To permit construction of a three one family dwellings in the bed of a final mapped street (Pemberton Avenue) contrary to Article 3, Section 35 of the General City Law. Premises is located within an R3-1 (SRD) Zoning District.

PREMISES AFFECTED – 486 Arthur Kill Road, and 120, 122 Pemberton Avenue, Block 5450, Lots 37, 35 and 36, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 20, 2006, acting on Department of Buildings Application Nos. 500772862, 500772853, and 5007728871 which reads, in pertinent part:

"The proposed construction of new residential building Use Group 2 in R3-1 Zoning District, within the bed of a mapped street is contrary to General City Law and Therefore referred to the Board of Standards

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and Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on March 28, 2006 after due notice by publication in the *City Record*, to continued hearing on May 9, 2006 and June 13, 2006, and then to decision on July 18, 2006; and

WHEREAS, by letter dated May 5, 2006, the Fire Department states that it has reviewed the above project and has no objections to the proposal; and

WHEREAS, by letter dated April 7, 2006, the Department of Transportation (DOT) has reviewed this project and has recommended that the applicant provide a cul de sac on Pemberton Avenue that meets Association of State Highway Transportation Organization design standards; and

WHEREAS, by letter dated May 1, 2006, the applicant asserts that DOT’s request for a cul de sac would prohibit development of the subject property and constitutes a taking of the subject property; and

WHEREAS, the Board notes that the turnaround proposed by DOT would unduly constrain the site; and

WHEREAS, accordingly, the Board accepts the applicant’s proposal without the turnaround because DOT does not have any plans to acquire the property and the Fire Department is satisfied with the subject proposal; and

WHEREAS, by letters dated May 10, 2005 and December 27, 2005, the Department of Environmental Protection (DEP) stated that it has reviewed the project and requests that the applicant provide a 35 ft. sewer corridor in the bed of Pemberton Avenue for the installation, maintenance, and/or reconstruction of the future drainage plans or amend the drainage plan; and

WHEREAS, by letters dated November 14, 2005 and May 1, 2006, the applicant argues that if the owner creates a sewer corridor it would not allow any room for the development and to amend the drainage plan would take up to three years at a cost of twenty-five thousand dollars, thereby creating an economic hardship for the owner; and

WHEREAS, the Board was not convinced by the applicant’s assertions as to cost and time delay, and finds that the drainage plan should be amended; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, April 20, 2006, acting on Department of Buildings Application Nos. 500772862, 500772853, and 5007728871, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 24, 2006”–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the either an amended drainage plan or a DEP waiver of that requirement shall be provided prior to the issuance of sewer permits;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2006.

370-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg & Spector, LLC for Edgewater Developers and Builders. Inc., Owner.

SUBJECT – Application November 23, 2004 – To permit construction of a one family dwelling in the bed of a final mapped street (Edgewater Road) contrary to Article 3, Section 35 of the General City Law. Premises is located within an R2 Zoning District.

PREMISES AFFECTED – 1511 Egmont Place, north side of Egmont Place 705.9 ft east of Mott Avenue, Block 15685, Lot 48, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 4, 2004, acting on Department of Buildings Application No. 402010051 reads, in pertinent part:

“Construction of a one family two story dwelling in the bed of mapped street contrary to General City Law 35.”; and

WHEREAS, a public hearing was held on this application on March 28, 2006 after due notice by publication in the *City Record*, and then to May 9, 2006 and June 13, 2006 and decision on the July 18, 2006; and

WHEREAS, by letter dated May 5, 2006, the Fire Department states that it has reviewed the above project and requires a paved turnaround for access of emergency vehicles; and

WHEREAS, by letter dated May 25, 2006, the applicant agreed to provide a paved turnaround at the edge of Egmont Place for emergency vehicle access; and

WHEREAS, by letter dated February 3, 2005, the Department of Environmental Protection states that it has reviewed the above project and requires a minimum 35 ft. corridor in the bed of Edgewater Road between Egmont Place and Dunbar Street for the purposes of maintenance, repair, and/or reconstruction of existing or future sewers; and

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WHEREAS, by letter dated November 16, 2005, the applicant has agreed to provide a 35 ft. sewer corridor in the bed of Edgewater Road, as reflected on the BSA-approved site plans; and

WHEREAS, by letter dated March 7, 2005, the Department of Transportation states that it has reviewed the above project and requests that a turnaround be provided at the dead end of Egmont Place to improve traffic movement ; and

WHEREAS, by letters dated May 1, and May 25, 2006, the applicant has provided a revised site plan providing a 34 ft. by 30 ft. "hammerhead" turnaround; and

WHEREAS, by letter dated June 12, 2006, DOT states that it has reviewed the applicant's proposal and finds it unacceptable because it does not meet the design standards as promulgated by the American Association of State Highway Transportation Organization; and

WHEREAS, the applicant notes that the DOT recommendation would require the applicant to secure an easement from the adjacent property owner; and

WHEREAS, the Board finds that the proposed turnaround submitted by the applicant on May 24, 2006, which is supported by the Fire Department, is an acceptable equivalent to the turnaround requested by DOT notwithstanding that agency's objection; and

WHEREAS, accordingly, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 4, 2004, acting on Department of Buildings Application No. 402010051, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received May 25, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT prior to the issuance of any permitting by DOB, the owner shall execute a sewer easement agreement, as approved by DEP;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2006.

153-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for MSP Development, owner.

SUBJECT – Application filed on June 28, 2005 – Proposed construction of a two family homes, which lies in the bed of a mapped street (141st Avenue) which is contrary to Section 35 of the General City Law. Premises is located in R3-2 zoning district.

PREMISES AFFECTED – 222-50 and 222-54 141st Avenue, Block 13149, Lot 148, 48, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for decision, hearing closed.

317-05-A

APPLICANT – Kevin Shea, applicant; Woodcutters Realty Corp. Owner; Three on Third LLC, lessee.

SUBJECT – Application November 1, 2005 – Appeal challenging DOB's interpretation of various provisions of the Zoning Resolution relating to the construction of a 16 story mixed use building in an C6-1/R7-2 Zoning district, which violates Zoning Floor Area exclusions, height and setback, open space and use regulations.

PREMISES AFFECTED – 4 East 3rd Street, South east corner of East Third and the Bowery, Block 458, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

Adopted by the Board of Standards and Appeals, July 18, 2006.

161-05-A

APPLICANT – Tottenville Civic Association, for Willow Avenue Realty, Inc., owner.

SUBJECT – Application July 15, 2005 – Appeal challenging a Department of Buildings determination, dated June 12, 2005, that the subject premises is comprised of two separate zoning lots based on DOB's interpretation of the definition of ZR 12-10" zoning lot"(c) & (e) and therefore could be developed as individual lots.

PREMISES AFFECTED – 7194, 7196 Amboy Road and 26 Joline Avenue, Block 7853, Lots 47, 74, Richmond, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

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For Applicant: Robert Schwiekist

For Opposition: Adam Rothkrug and Robert Caneco.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

353-05-BZY

APPLICANT – Cozen & O'Connor for Emet Veshlom Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for decision, hearing closed.

355-05-BZY

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue, Block 869, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for decision, hearing closed.

356-05-A & 357-05-A

APPLICANT – The Law Office of Fredrick A. Becker, for Structures LLC, owner.

SUBJECT – Application December 14, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning. New zoning district is R3X as of September 15, 2005.

PREMISES AFFECTED – 150 and 152 Beach 4th Street a/k/a 1-70 Beach 4th Street, south of Seagirt Avenue, Block 15607, Lot 62 and 63, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra Altman, Michael Stern and Matt Probkwitz.

For Opposition: Fran Tuccio, Jose Velez, and Tracy A. Conroy.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

361-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: John Keith for Assembly Member Brennan, John Carroll, Lillian West and Dehorh Monluh.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

366-05-A

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place,

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Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: John Keith for Assembly Member Brennan, John Carroll, Lillian West and Dehorh Monluh.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

12-06-A

APPLICANT – Stuart A. Klein, Esq., for Carl F. Mattone, owner.

SUBJECT – Application January 23, 2006 – Appeal seeking a reconsideration of Department of Buildings refusal to revoke permits for a single family home which allowed numerous violations of the Zoning Resolution required side yards, waterfronts yards, and bulk regulations. Premises is located within R1-2 Zoning District.

PREMISES AFFECTED – 37-19 Regatta Place, bounded by Bay Street and the Little Neck Bay, Block 8071, Lot 32, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Stuart Klein and Arthur T. Sempliner.

For Opposition: Carole Slater.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: John Keith for Assemblymember Brennan, John Carroll, Lillian West and Dehorh Monluh.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 1:30 P.M.

REGULAR MEETING TUESDAY AFTERNOON, JULY 18, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, and Commissioner Collins.

ZONING CALENDAR

249-04-BZ

APPLICANT – Harold Weinberg, PE for Prince Parkside LLP, owner.

SUBJECT – Application July 13, 2004 – Zoning Variance (bulk) pursuant to ZR § 72-21 to allow an enlargement of an existing non-complying UG 2 residential building in an R7-1 district; contrary to ZR §23-121, §54-31, §23-462, §25-241, §23-22.

PREMISES AFFECTED – 205 Parkside Avenue, Brooklyn, located between Ocean Avenue and Parkside Court (Block 5026, Lot 302), Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

Adopted by the Board of Standards and Appeals, July 18, 2006.

351-04-BZ

APPLICANT – The Augusta Group, for Stahva Realty, owner.
SUBJECT – Application November 1, 2004 – Under Z.R. § 73-44 to allow parking reduction for proposed enlargement of existing office building located in an R6B / C2-2.

PREMISES AFFECTED – 210-08/12 Northern Boulevard, thru lot between Northern Boulevard and 45th Road, 150' east of 211th Street, Block 7309, Lots 21 and 23 (Tentative Lot 21), Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Sol Korman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 6, 2005, acting on Department of Buildings Application No. 401999637, reads:

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“Reduction of the parking requirement for proposed enlargement and change of use of Use Group 4 to Use Group 6, from 1/300 to 1/600 in an R6B/C2-2 District, parking category B1, requires a Special Permit pursuant to Section 73-44 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within an R6B/C2-2 zoning district, a reduction in the required number of accessory parking spaces, from 65 to 33, related to a proposed enlargement of an existing office building, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on January 24, 2006, after due notice by publication in *The City Record*, with continued hearings on March 14, 2006, April 25, 2006, June 13, 2006 and then to decision on July 18, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, initially, Community Board 11, Queens, and the Queens Borough President recommended disapproval of this application, citing concerns about traffic and a parking shortage; and

WHEREAS, the proposal first submitted to the Community Board included a larger amount of community facility space within the residential portion of the site; this was later reduced; and

WHEREAS, the subject site is located on the south side of Northern Boulevard between Oceania and 211th Streets, with frontage on Northern Boulevard and 45th Road; and

WHEREAS, the site comprises two lots – Lot 21 which is a through lot that fronts on Northern Boulevard and 45th Road, and Lot 23 which fronts on Northern Boulevard; and

WHEREAS, the majority of the site is within a R6B/C2-2 zoning district, and the portion of Lot 21 that fronts on 45th Road is within an R4 zoning district; and

WHEREAS, the total area of the lots within the R6B/C2-2 portion of the site is 10,000 sq. ft. and the area of the lot within the R4 portion is 5,000 sq. ft.; and

WHEREAS, Lot 21 is improved upon with a 9,000 sq. ft. two-story office building fronting on Northern Boulevard and subject to a prior Board grant discussed below; and

WHEREAS, Lot 23 is improved upon with a one-story restaurant and a parking lot, fronting on Northern Boulevard, to the east of the existing office building; and

WHEREAS, the applicant proposes: (1) to demolish the existing one-story restaurant building on Lot 23 and replace it with a 8,500 sq. ft. two-story plus cellar addition (the “Addition”) that will be connected to the existing office building on Lot 21, and (2) to construct a 3,740 sq. ft. two-story and cellar mixed residential and community facility building on the 45th Road frontage of Lot 21; and

WHEREAS, as to the R6B/C2-2 portion of the site, the enlarged 17,500 sq. ft. building will provide a dialysis center in the cellar and medical offices (UG 4) on the first and second floors of the existing building, and professional offices (UG 6) on the first and second floors of the Addition

and a portion of the second floor of the existing building; and

WHEREAS, as to the R4 portion of the site, the applicant proposes to construct a 3,740 sq. ft. two-story residential building (the “Residential Building”), with an additional 3,060 sq. ft. of community facility use in the cellar, to be occupied by UG 4 medical offices in the cellar and a single family dwelling on the first and second floors; and

WHEREAS, an accessory parking garage is proposed for the cellar and sub-cellar of the office building, with vehicular access from Northern Boulevard; and

WHEREAS, the Board granted a prior special permit, under BSA Cal. No. 95-93-BZ which allowed for the reduction of the required parking spaces for the existing building from 30 to 15; the remaining 15 spaces were waived, pursuant to ZR § 36-231, and no parking was provided; and

WHEREAS, pursuant to ZR § 36-21, UG 6 uses in parking requirement category B1 located within the R6B/C2-2 portion of the subject zoning lot are required to have one space per 300 sq. ft. of floor area; thus, the proposed 17,500 sq. ft. office building (which includes the Addition) is required to have 58 accessory parking spaces; and

WHEREAS, pursuant to ZR § 25-31, UG 4 uses within the R4 portion of the zoning lot are required to have one space per 500 sq. ft. of floor area; thus the proposed 3,060 sq. ft. of UG 4 medical office space in the cellar of the Residential Building is required to have seven accessory parking spaces; and

WHEREAS, therefore, a total of 65 parking spaces is required; and

WHEREAS, the applicant notes that the residential use on the R4 portion of the site requires an additional two parking spaces which will be provided separately and are not part of the instant application; and

WHEREAS, pursuant to ZR § 73-44, the Board may allow a reduction in the number of accessory off-street parking spaces required under ZR § 36-21; and

WHEREAS, for the subject R6B/C2-2 zoning district and the subject UG 6 use, the Board may reduce the required parking from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, for the subject R4 zoning district and the subject UG 4 use, the Board may reduce the required parking from one space per 500 sq. ft. of floor area to one space per 1,000 sq. ft. of floor area; and

WHEREAS, the applicant represents that assuming a special permit is obtained, the site will be developed with a 33-space accessory parking lot, to provide for both the UG 6 uses within the R6B/C2-2 and the UG 4 uses within the R4 zoning districts; and

WHEREAS, ZR § 73-44 requires that the Board determine that the proposed UG 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant has submitted sufficient evidence of the good faith of the owner in pursuing the proposed UG 6 office use; in particular, the Board observes that the applicant currently owns the site and will occupy the proposed building with medical offices, dialysis center, and other commercial offices; and

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WHEREAS, an initial version of the proposal contemplated that the Addition would have 9,000 sq. ft. of floor area; and

WHEREAS, at the Board's suggestion, the applicant modified the rear and side yards and reduced the floor area of the Addition by 500 sq. ft.; and

WHEREAS, the Board notes that, as a result of this change, the parking requirement is reduced from 67 spaces (including seven spaces required for the community facility space in the R4 zoning district) to 65 spaces; and

WHEREAS, therefore, since the applicant is requesting a 50 percent reduction in the total of number of spaces through the special permit, 33 spaces must be required; and

WHEREAS, at hearing, the Board expressed concern about the following matters: (1) the feasibility of the proposed parking layout, and (2) the demand for parking at the site; and

WHEREAS, as to the first issue, the applicant made several revisions to the parking plan so as to provide viable parking spaces while addressing community concerns about restricting traffic on the residential 45th Road; and

WHEREAS, specifically, the Board notes that the applicant initially proposed 41 attended parking spaces; and

WHEREAS, the Board expressed concern about the traffic circulation with this number of spaces and asked the applicant to re-examine the layout; and

WHEREAS, the applicant subsequently reduced the total to 34 parking spaces, including several under the ramp; and

WHEREAS, the applicant submitted revised plans which indicate that 34 spaces and better circulation could be achieved by lowering the sub-cellar to a depth of 17 feet, permitting additional parking spaces under the ramp at the sub-cellar level; and

WHEREAS, the Board notes that this allowed for additional maneuvering space; and

WHEREAS, however, the Board expressed concern about the viability of the spaces under the ramp, and upon review of the plans, determined that 33 spaces were more viable than the 34 proposed, in that some of the ramp spaces could be eliminated; and

WHEREAS, the Board also notes that it will condition this grant on DOB review and approval of the parking layout; the Board is not approving the layout; and

WHEREAS, at the Board's request, and in response to community concerns, the applicant revised the plan to limit the egress from the new building into the residential portion of the zoning, posting a sign that reads "Emergency exit, No public access"; and

WHEREAS, as to the second issue, at hearing, the Board asked the applicant to explain the operation of the dialysis center; and

WHEREAS, the applicant responded that the dialysis center requires large equipment that takes up a considerable amount of space and that the degree of potential patient and employee traffic to and from the site is therefore not proportionate to the amount of floor area; and

WHEREAS, the Board also expressed concern about

the large number of examination rooms and the amount of traffic that might be generated; and

WHEREAS, at the Board's suggestion, the applicant reduced the number of examination rooms which minimized concerns about traffic impact; and

WHEREAS, the applicant also cited to a parking and transportation survey, which indicated that on-street parking sufficiently meets the current parking demands and which also shows that the site is well-served by public transportation; and

WHEREAS, the Board notes that the survey reflects the availability of significant on street parking in the area of the premises; and

WHEREAS, additionally, the applicant notes that access to public transportation is available on Northern Boulevard in close proximity to the site; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA056Q dated April 18, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-44 and 73-03, to permit, within an R6B/C2-2 zoning district, a reduction in the required number of accessory parking spaces for a proposed enlargement of an existing office building from 65 to 33, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings as they apply to the

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objections above noted filed with this application marked "Received June 29, 2006"--(5) five sheets and "Received July 18, 2006" -- (2) two sheets and *on further condition*:

THAT there shall be no change in ownership or use of the site or the building without prior application to and approval from the Board;

THAT a minimum of 33 parking spaces shall be provided in the accessory parking lot;

THAT no certificate of occupancy shall hereafter be issued if the use of the site is changed to a use that would require more accessory parking spaces than UG 6 parking category B1, unless additional accessory off-street parking spaces sufficient to meet such requirements are provided;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the layout and design of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2006.

132-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sami Alboukai, owner.

SUBJECT – Application May 26, 2005 – Under Z.R. §73-622 to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per Z.R. §23-141, a rear yard less than the minimum per Z.R. §23-47 and a perimeter wall height greater than the maximum per Z.R. §23-31. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 220 West End Avenue, west side of West End Avenue between Oriental Boulevard and Esplanade, Block 8724, Lot 158, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: W. Tyler Faisbai.

For Administration: John Yacavone, Department of Fire.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 26, 2005, acting on Department of Buildings Application No. 302063451, reads, in pertinent part:

“[Proposed enlargement]

1. Causes an increase in the floor area exceeding the allowable floor area ratio and is contrary to the allowable floor area ratio allowed by Section 23-141 of the Zoning Resolution.
2. Causes an increase in the lot coverage exceeding the . . . lot coverage allowed by Section 23-141 of the Zoning Resolution.
3. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the 30’-0” that is required.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on January 24, 2006, after due notice by publication in *The City Record*, with continued hearings on March 14, 2006, April 11, 2006, May 2, 2006, June 6, 2006 and July 11, 2006, and then to decision on July 18, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the Manhattan Beach Community Group recommends disapproval of this application, contending that the proposed bulk parameters would result in a home that would negatively impact the neighborhood character and that the proposal was for a new building, not an enlargement; and

WHEREAS, the subject lot is located on the west side of West End Avenue between Oriental Boulevard and the Esplanade; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 1,460 sq. ft. (0.37 FAR) single-family dwelling; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, in order to establish that the proposal constitutes an enlargement, the Board asked the applicant to provide plans that clearly identified which portions of the home were being retained; and

WHEREAS, the applicant seeks an increase in the floor area from 1,460 sq. ft. (0.37 FAR) to 4,037 sq. ft. (1.01 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.60 FAR, with attic); and

WHEREAS, the proposed enlargement will decrease the open space from 2,978 sq. ft. to 2,333 sq. ft. (the minimum required open space is 2,600 sq. ft.) and increase the lot coverage from 26 percent to 58 percent (the maximum

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permitted lot coverage is 35 percent) ; and

WHEREAS, the proposed enlargement will reduce the rear yard from 26'-11" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the enlargement will reduce one side yard from 5'-9" to 5'-0" and the other side yard from 9'-10" to 8'-0"; the resulting side yards meet the minimum requirement and no waiver is necessary; and

WHEREAS, similarly, the enlargement will reduce the front yard from 28'-8" to 15'-0", which complies; and

WHEREAS, initially, the applicant proposed a perimeter wall height of 23'-4", but reduced it to 21'-0" at the Board's request; this height complies with the district regulations; and

WHEREAS, additionally, the applicant reduced the proposed FAR from 1.04 to 1.01, also at the Board's request; and

WHEREAS, the Board notes that this FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, the Board also notes that the proposed front yard, though diminished, still complies with applicable R3-1 district requirements, as do the side yards; and

WHEREAS, at hearing, the Board asked the applicant to submit photographs of and information about other homes in the area in order to establish a context for this enlargement; and

WHEREAS, the applicant submitted photographs of several homes on West End Avenue that are comparable to the proposed home; and

WHEREAS, upon review of the submitted photographs, the Board notes a number of comparably-sized homes in the immediate area, and finds the proposed home to be compatible with these homes; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family dwelling, which

does not comply with the zoning requirements for Floor Area Ratio, open space, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-47, and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 14, 2006"-(11) sheets; and *on further condition:*

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,037 sq. ft., a total FAR of 1.01, a perimeter wall height of 21'-0", and a total height of 35'-0", all as illustrated on the BSA-approved plans;

THAT the total attic floor area shall not exceed 728 sq. ft., as confirmed by the Department of Buildings;

THAT the portions of the foundation, floors and walls indicated as being retained on Plans 10-12, 18, and 19, stamped June 20, 2006, shall be retained and reviewed by DOB prior to the issuance of permits;

THAT DOB shall review and approve the location of any garage;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2006.

202-05-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.

SUBJECT – Application August 24, 2005 – Under Z.R. §73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district.

PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

WHEREAS, the decision of the Queens Borough Commissioner, dated August 3, 2005, acting on Department

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of Buildings Application No. 402179664, reads, in pertinent part:

“The physical culture establishment is not permitted as of right in M1-1 zoning districts, but requires the special permit from the BSA as per 42-31.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M1-1 zoning district, a three-story physical culture establishment (“PCE”) with 49,634 total sq. ft. of floor space, contrary to ZR § 32-10; and

WHEREAS, the PCE (to be operated as “Spa World”) will contain facilities for massage and exercise, accessory pools, saunas, and tubs, and other ancillary services related to the operation of the facility; and

WHEREAS, the proposed hours of operation are as follows: bath and locker room area – 6 a.m. to midnight, seven days a week (no admission after 10 p.m.); restaurant and pools – 10 a.m. to 10 p.m., seven days a week; massage and fitness areas – 6 a.m. to 10 p.m., seven days a week; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Board notes that the applicant originally proposed a three-story plus cellar facility that included a PCE as well as a hotel on the third floor, with 15 rooms; this proposal was modified during the course of the public hearing process to the current version; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, with continued hearings on April 25, 2006, May 16, 2006 and June 20, 2006, and then to decision on July 18, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 7, Queens, recommends disapproval of the current version of this application; and

WHEREAS, the Community Board opposed the application because of concerns about potential traffic impacts; and

WHEREAS, State Senator Padavan and Council Member Avella also oppose this application; Council Member Avella’s reasons for opposing the application are discussed below; and

WHEREAS, certain neighbors also oppose the application; and

WHEREAS, however, the Queens Borough President, Helen Marshall, recommended approval of the initial version of the application, on condition that parking be attended, that deliveries occur at 6 a.m. or during off peak hours, that the facility be open to all in the local community, and that operation of the facility comply with all applicable laws; and

WHEREAS, further, State Assembly Member Meng and Council Member Gallagher support the application; and

WHEREAS, finally, the application has the support of

the pastors of both the Full Gospel New York Church and the Arumdaun Presbyterian Church; and

WHEREAS, the applicant states that an approved interior fire alarm system will be installed in the entire PCE space, with the addition of smoke detectors, manual pull stations, local audible and visual alarms, and be connected to a FDNY-approved Central Station; and

WHEREAS, accordingly, the Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located in an M1-1 zoning district, on a block bounded by 11th and 14th Avenues and 131st and 132nd Streets, and has a lot area of 30,124 sq. ft.; and

WHEREAS, the site was formerly occupied by a one-story manufacturing building, which has been demolished; and

WHEREAS, construction on the new building has commenced; however, no certificate of occupancy may be issued for the proposed PCE without the subject special permit; and

WHEREAS, Spa World will occupy approximately 30,049 sq. ft. of zoning floor area and 19,585 sq. ft. of gross floor area in the cellar (for a total floor space devoted to the facility of 49,634 sq. ft.); there will also be a 4,603 sq. ft. boiler room in a sub-cellar; and

WHEREAS, 106 attended accessory parking spaces will also be provided on two above-grade levels (nine reservoir spaces are included in this total); and

WHEREAS, the applicant represents that the PCE facility will be located in the cellar (19,585 sq. ft.), first floor (15,565 sq. ft.), second floor (8,204 sq. ft.), and third floor (6,280 sq. ft.); and

WHEREAS, the cellar will contain the lobby, locker rooms, rest areas, tubs, saunas, and showers; and

WHEREAS, the first floor will contain facilities for massage, spaces for salon treatments (nail and skin care), saunas, a snack bar, and toilets; and

WHEREAS, the first floor will also contain the lower level accessory parking area (52 spaces), as well as the drop-off and pick-up zone for the attended parking; and

WHEREAS, the remainder of the parking spaces (54 spaces) will be on the upper level; and

WHEREAS, the second floor will contain private baths, powder rooms, and, in an outdoor spa area, hot pools, sauna, and tubs; and

WHEREAS, the third floor will contain a VIP lounge, a fitness area with exercise equipment, a yoga/aerobics room, and a lounge, dining area, and kitchen; and

WHEREAS, the Board notes that this application is one for a special permit, not a variance, and some discussion of the distinction is warranted; and

WHEREAS, a special permit use is a specifically contemplated and expressly permitted use, approved by the City Planning Commission (CPC) and the City Council for location within specified zoning districts, so long as this Board or CPC finds that the proposed use is in harmony with the general zoning plan and will not create adverse impacts

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on the neighborhood; and

WHEREAS, no showing of hardship is required to obtain a special permit for a PCE; however, the Board must ensure that conditions attach to any issuance of a PCE special permit that will serve to minimize or negate potential impacts upon the neighborhood; and

WHEREAS, for a PCE special permit, the proposed facility must meet the definition of PCE as set forth in ZR § 12-10, and the applicant must meet the specific prerequisites and findings set forth in ZR § 73-36, as well as the applicable general special permit findings of ZR § 73-03; and

WHEREAS, ZR § 12-10 “Physical culture or health establishments” provides, in pertinent part, that a PCE “is any establishment or facility, including commercial and non-commercial clubs, which is equipped and arranged to provide instruction, services, or activities which improve or affect a person’s physical condition by physical exercise or massage . . . Therapeutic or relaxation services, such as sun tanning, baths, showers, tubs, Jacuzzis, whirlpools, saunas, steam rooms, isolation flotation tanks and meditation facilities may be provided only as accessory to the physical exercise program or massage facility.”; and

WHEREAS, ZR § 73-36, which authorizes the Board to grant a special permit for a PCE, specifies the zoning districts in which the PCE special permit is available; and

WHEREAS, the Board has confirmed that the special permit is available in the subject M1-1 zoning district; and

WHEREAS, the Board may permit a PCE in this zoning district provided that two findings are met; and

WHEREAS, the first finding is that the use is so located as not to impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the Board observes that while the subject site is within a manufacturing district, there are residential uses in the neighborhood; and

WHEREAS, specifically, while the site is bordered on the south and east by M1-1 zoning, an R3-2 district is to the north, across 11th Avenue, and an R4 district is to the west, across 131st Street; and

WHEREAS, in addition to the subject site, the subject block is developed with a warehouse and automobile repair facility; and

WHEREAS, to the east and across 132nd Street there is a truck transfer facility and a shopping center; and

WHEREAS, to the north and across 11th Avenue there is a townhouse development, and to the west there is a mix of residential and industrial uses; and

WHEREAS, thus, the context of the neighborhood is best characterized as mixed-use, with the subject block in particular being occupied by manufacturing and commercial uses; and

WHEREAS, the Board notes that Spa World will function as a commercial enterprise, and as such will not negatively affect the mixed-use character of the neighborhood, which includes other commercial and retail uses; and

WHEREAS, nor is Spa World fundamentally incompatible with the residential uses; and

WHEREAS, the Board notes that it often has granted PCE special permits for facilities that are in proximity to residences – even in the same building as residences – in all boroughs of the City; and

WHEREAS, the Board notes that the enactors of the ZR – CPC and the City Council – apparently agree that residences and PCEs can be compatible, as evidenced by the inclusion of zoning districts that allow residential use in the list of permissible districts for the location of PCEs; and

WHEREAS, however, the Community Board suggests that the scale of Spa World will lead to adverse impacts on traffic and parking, which will compromise the character of the neighborhood and impact the residences; and

WHEREAS, the applicant contests this argument, and submitted a detailed traffic and parking study which purported to refute it; and

WHEREAS, while the initial study concluded that there would not be any significant traffic or parking impacts, in terms of overall traffic generation and loading of intersections and in terms of effect on on-street parking availability, the Board nevertheless asked the applicant to make certain refinements; and

WHEREAS, specifically, the Board asked that the study be modified to increase the amount of the proposed percentage of auto and/or taxi trips that would be generated by the proposal at peak hours; and

WHEREAS, the applicant subsequently modified the study to increase this percentage from 40 percent to 90 percent, which the Board finds is more realistic given the location of the site; and

WHEREAS, the modified study included an analysis of three different traffic scenarios: (1) Scenario A, which compares the proposed PCE to an as of right retail/commercial/office building, as based on the CEQR technical manual; (2) Scenario B, which compares the proposed PCE to an as of right retail/office scenario, based upon Spa World’s business plan; and (3) Scenario C, which is similar to Scenario B, except that the vehicle occupancy rate for the weekend period has been decreased from 3 persons to 2.5, in order to be more conservative; and

WHEREAS, the study includes modal split and vehicle trip analysis for all three scenarios, as well as an analysis of the PCE’s utilization rates using assumptions that the Board has reviewed and finds credible; and

WHEREAS, for Scenarios A and B, the study concludes: (1) that the as of right development would generate significantly more vehicle trips than the proposed PCE; and (2) that the maximum parking demand generated by the PCE for both weekdays and Saturdays would not exceed the available accessory parking capacity proposed to be available at the facility; and

WHEREAS, for Scenario C, the study concludes that the as of right development would generate more trips than the PCE, and that the maximum parking demand generated by the PCE on Saturday would be 108 spaces, which could be accommodated by the accessory parking lot (106 spaces) and available on-street parking (two spaces); and

WHEREAS, the study’s on-street parking survey was

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the result of a field investigation of on-street parking within a 400 ft. radius of the site; the investigation revealed that on Saturdays, there was a minimum of 99 available spaces to a maximum of 138 available spaces throughout the day, which the Board observes is well more than enough to accommodate the two spaces that are needed under the conservative Scenario C; and

WHEREAS, the modified study notes that Spa World will provide 106 accessory attended parking spaces (including nine reservoir spaces); and

WHEREAS, the Board has reviewed the study and finds its methodology and results credible; and

WHEREAS, because the parking demand generated by Spa World will be accommodated almost exclusively on-site in the attended parking lots, the Board finds that there will not be any detrimental parking impact on the neighborhood; and

WHEREAS, as to traffic, the Board notes that the traffic study concludes that the vehicular trips generated by Spa World are significantly less than what would be generated by an as of right commercial use; and

WHEREAS, further, the Board requested that the applicant modify its vehicular entrance, so as to lessen the potential impact that the generated traffic might have on the streets surrounding the site; and

WHEREAS, originally, the applicant had proposed a drop-off in front of the facility on 11th Avenue, across from residences, with a “u”-shaped driveway and two curb cuts; parking was located at the rear of the facility, and valets would take the vehicles to the parking area; and

WHEREAS, the Board asked the applicant to modify the site plan so the vehicle drop and pick up zone will be at the rear of the facility where the parking is located, so that no vehicles using the parking lots will queue along 11th Avenue across from residential uses, circle the premises, or create unnecessary traffic that might impact traffic patterns or negatively affect adjacent uses; and

WHEREAS, the front entrance would be used for taxi drop-off and pedestrian traffic only, eliminating the queuing of vehicles; and

WHEREAS, in response, the applicant submitted a modified site plan illustrating the requested change; and

WHEREAS, additionally, the Board asked the applicant to include traffic control signage as part of its application; and

WHEREAS, the applicant responded by submitting a detailed sign plan, showing the text of the signage and its locations; and

WHEREAS, the Board has reviewed this sign plan and finds that it will aid in guiding traffic flow to and from the site in a manner that will minimize potential traffic impacts; and

WHEREAS, in conclusion, the Board finds that the applicant has successfully established that there will be no adverse traffic or parking impacts due the proposed PCE, and further finds that the modifications to the entrances and the signage plans further ensure that negative traffic impacts will not occur; and

WHEREAS, the Board also inquired as to other possible negative impacts, including the potential that lighting from the third floor open pool area could affect neighboring residential uses; and

WHEREAS, in response, the applicant explained that the open area would be screened with a 6’-6” parapet, and that all lighting would be directed downwards and away from any adjacent residential uses; and

WHEREAS, the applicant has submitted plans that show the location of the lighting and the estimated foot candle data, which the Board finds acceptable; and

WHEREAS, the Board is also limiting accessory business signage to a single sign, as illustrated on the BSA-approved plans; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties; and

WHEREAS, accordingly, the first finding for a PCE special permit, as set forth at ZR § 73-36, is met; and

WHEREAS, the second finding is that the PCE contain one or more of the following: (1) a regulation size sports facility, such as a basketball court; (2) a 1,500 sq. ft. minimum swimming pool; (3) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or (4) facilities for the practice of massage by New York State licensed masseurs or masseuses; and

WHEREAS, as noted above, the proposed PCE will contain exercise areas and massage areas; and

WHEREAS, however, ZR §§ 12-10 and 73-36 also provide that therapeutic or relaxation services may only be provided as accessory to the types of facilities mentioned above; and

WHEREAS, Council Member Avella, through his consultant, argues that the proposed facility will contain mostly therapeutic and relaxation services, in the form of tubs, pools, treatment rooms, and private baths; and

WHEREAS, the consultant states that only approximately 1,300 sq. ft. of the proposed facility will be devoted to massage, and questions whether this amount of floor area can be appropriately characterized as the primary use in a facility with a total floor space of 49,634 sq. ft.; and

WHEREAS, in support of this argument, the consultant cites to the definition of “accessory use” in ZR § 12-10, and to a 1960 Supreme Court case in which the court found that a 32-lane bowling alley was not properly characterized as accessory to a hotel having only 35 rooms (La Vecchia v. Board of Standards and Appeals, 204 N.Y.S.2d 429); and

WHEREAS, the consultant characterizes the proposed facility not as a PCE, but as a therapeutic services facility with accessory massage; and

WHEREAS, the Board respectfully disagrees with the Council Member’s consultant; and

WHEREAS, first, as noted by the applicant, DOB has issued PCE objections, and the Board has issued PCE special permits, for comparable facilities in Manhattan, which provide a full range of spa services, including massage; and

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WHEREAS, as set forth above, DOB reviewed the proposed plans for Spa World, concluded it was a PCE, and issued an objection stating that the PCE special permit was required; and

WHEREAS, further, the Board has reviewed the definition of accessory use and finds that it does not support the Council Member's consultant's argument; and

WHEREAS, the accessory use definition as set forth in ZR § 12-10 provides, in sum and substance, that an accessory use is a use: (1) which is conducted on the same zoning lot as the primary use; (2) is a use which is clearly incidental to, and customarily found in connection with, such principal use; and (3) is in the same ownership as such principal use, or is operated and maintained on the same site for the benefit or convenience of the customers or visitors of the primary use; and

WHEREAS, the applicant states, and the Board agrees, that that the proposed therapeutic and relaxation services to be located in the proposed PCE meet this definition; and

WHEREAS, the Board notes that no mention is made in this definition of the amount of square footage devoted to the primary use versus the accessory use; and

WHEREAS, further, while many of the accessory uses listed as examples in ZR § 12-10 may be smaller than the primary use, others, such as the storage of goods in connection with commercial or manufacturing uses or accessory parking lots, could conceivably occupy more space within a building or area on a lot than the primary use; and

WHEREAS, had the City Council or CPC intended that the square footage devoted to a proposed use would be determinative of its status as primary or accessory, the plain language of ZR § 12-10 "accessory use" would have included parameters of this nature; and

WHEREAS, while square footage may be a relevant consideration in some cases involving other primary uses, the Board is aware that many PCEs have a broad range of services and that the devotion of square footage to designated PCE uses versus what may be called therapeutic or relaxation uses may not always reflect a ratio where the primary use occupies more square footage than the accessory use; and

WHEREAS, additionally, even assuming that such a consideration is relevant to the instant application, the Board finds that the Council Member's consultant misstates the ratio of square footage devoted to defined PCE uses versus that devoted to therapeutic/relaxation services; and

WHEREAS, the relevant comparison is not the square footage devoted to PCE uses versus the total square footage of the facility, as assumed by the consultant; and

WHEREAS, instead, the appropriate measure of comparison is between the amount of square footage devoted to massage and exercise versus the amount of square footage devoted to actual therapeutic pools, saunas, and tubs; and

WHEREAS, the PCE also contains beauty treatment rooms, office space, a reception area, a main hall, a lobby hall, a laundry room, a janitor room, a snack bar, a kitchen and dining room, restrooms, powder rooms, employee rooms and office, locker rooms, a computer room, and a play room, among other spaces; and

WHEREAS, these areas are not devoted to therapeutic or relaxation services and should not be included in the ratio; and

WHEREAS, as reflected in the applicant's July 5 submission, the square footage of the facility devoted to massage, exercise and aerobics is 3,548 sq. ft., and the area devoted to pools, tubs, saunas, and other therapeutic or related services is 8,058 sq. ft.; and

WHEREAS, while the aggregate floor space devoted to the tubs, saunas, baths, pools and other such services still may exceed that devoted to the aggregate of the PCE uses, the disparity is much less significant than argued by the Council Member's consultant; and

WHEREAS, finally, the Board does not find the consultant's citation of the La Vecchia case to be relevant; and

WHEREAS, the Board notes that the case is factually dissimilar: the hotel under consideration in La Vecchia proposed to open the bowling alley to non-guests of the hotel; and

WHEREAS, thus, the bowling alley was not exclusively for the use of the hotel guests; and

WHEREAS, in contrast, the therapeutic services available at Spa World are available only to customers of Spa World; and

WHEREAS, further, no mention of the amount of square footage devoted to the primary and accessory uses is made by the court in La Vecchia; and

WHEREAS, based upon the above, the Board rejects the Council Member's consultant's contention as without merit, and accordingly determines that the second finding for the PCE special permit, as set forth at ZR § 73-36, has been met; and

WHEREAS, while the opposition has argued that the proposed PCE will negatively impact area traffic flow and parking availability, no evidence in support of this argument is in the record; in fact, the record shows that neither parking or traffic will be impacted; and

WHEREAS, nor will the residential uses be impacted in any other manner to a degree greater than what might occur from an as of right commercial development; and

WHEREAS, as noted by the applicant, the proposed PCE will provide a family-oriented spa experience and make use of a parcel of land that was underutilized; and

WHEREAS, further, the proposed facility now incorporates many features requested by the Board, including an improved circulation plan and signage; and

WHEREAS, the Board notes that its grant is conditioned in order to ameliorate any potential effects the proposed PCE might have; said conditions are reflected below; and

WHEREAS, the Board further notes that unlike an as of right commercial development, the grant herein imposes as a condition hours of operation that will limit the amount of traffic generation; in particular, the Board notes that there will be no entry to Spa World permitted after 10 p.m.; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or

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disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, thus, based upon its review of the record, the Board has determined that the evidence submitted by the applicant supports the requisite findings set forth at ZR §§ 73-36 and 73-03; and

WHEREAS, though not related specifically to the PCE special permit findings, there was some discussion on the record related to the proposed building itself, and not the proposed uses; and

WHEREAS, specifically, Council Member Avella, through his consultants, contended that the building as proposed violated certain bulk provisions of the ZR and certain Building Code provisions; and

WHEREAS, the applicant conceded that some of the concerns were valid, and modified the plans accordingly; and

WHEREAS, the applicant also disputed some of the contentions; and

WHEREAS, the Board notes that its grant herein relates to the use of the premises as a PCE, and no approval as to ZR bulk provisions or Building Code compliance is being made; in fact, the Board has no authority under the special permit to waive such provisions; and

WHEREAS, further, the Board notes that DOB shall conduct a full plan examination of the proposed construction plans for ZR bulk and Code compliance; and

WHEREAS, should any such non-compliance be revealed through DOB's review, the applicant will be required to modify the plans accordingly; however, none of this has any relevance to the Board's determination as to the PCE special permit application; and

WHEREAS, in addition to the concerns raised by Council Member Avella and his consultant, the Board expressed concern that the proposed cellar level was actually a basement, which would mean the floor space would count as floor area; this would render the proposed building over-bulk; and

WHEREAS, the Board asked the applicant to confirm with DOB the status of the lowest level of the proposed building; and

WHEREAS, pursuant to a reconsideration submitted into the record, DOB has confirmed that the cellar of the facility is in fact a cellar and not a basement; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA015Q, dated April 10, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within an M1-1 zoning district, a three-story physical culture establishment with a total of 49,634 sq. ft. of floor space, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received July 12, 2006"-(19) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, from July 18, 2006 to July 18, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be as follows: bath and locker room area – 6 a.m. to midnight, seven days a week (no admission after 10 p.m.); restaurant and pools – 10 a.m. to 10 p.m., seven days a week; massage and fitness areas – 6 a.m. to 10 p.m., seven days a week;

THAT all massages shall be performed only by practitioners with valid and current NYS massage licenses;

THAT a minimum of 106 attended accessory parking spaces (including nine reservoir spaces) shall be provided;

THAT all trash pick-up and deliveries shall occur during off peak hours between 6 a.m. and 8 a.m. and 2 p.m. to 4 p.m.;

THAT all exterior lighting be directed downwards and away from adjacent uses;

THAT shuttle bus service shall be provided for Spa World employees to and from the facility;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT accessory business signage shall only be permitted as indicated on the BSA-approved plans;

THAT all directional signage shall be installed and maintained as indicated on the BSA-approved plans;

THAT Spa World membership shall be made available to local community residents;

THAT DOB shall perform a full plan examination of Application No. 402179664 for zoning bulk and Building Code compliance; no professional certification is permitted;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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THAT fire safety measures, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2006.

314-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Mouhadeb, owner.

SUBJECT – Application October 25, 2005 – Special Permit Z.R. §73-622 for an enlargement to a single family residence which proposed an increase in the degree of non-compliance with respect to floor area ratio and open space/lot coverage as per Z.R. §23-141b, less than the total required side yards as per Z.R. §23-361a and a rear yard less than the required rear yard as per Z.R. §23-47. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 1670 East 23rd Street, East 23rd Street between Avenue P and Quentin Road, Block 6785, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, September 29, 2005, acting on Department of Buildings Application No. 302002277, reads, in pertinent part:

“[Proposed enlargement]

1. Increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141(b).
2. Increases the degree of non-compliance of an existing building with respect to open space/coverage which is contrary to ZR Section 23-141(b).

3. Results in one side yard of less than 5 feet and the total of both side yards less than 13 feet, contrary to ZR Section 23-461(a).

4. Results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47.”

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, with a continued hearing on June 6, 2006, and then to decision on July 18, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the west side of East 23rd Street between Avenue P and Quentin Road; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 2,224.8 sq. ft. (0.556 FAR) single-family dwelling; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, in order to establish that the proposal constitutes an enlargement, the Board asked the applicant to provide plans that clearly identified which portions of the home were being retained; and

WHEREAS, the applicant seeks an increase in the floor area from 2,224.8 sq. ft. (0.556 FAR) to 3,966.56 sq. ft. (0.991 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.60 FAR, with attic); and

WHEREAS, the proposed enlargement will decrease the open space from 2,291 sq. ft. to 1,915 sq. ft. (the minimum required open space is 2,600 sq. ft.) and increase the lot coverage from 43 percent to 52 percent (the maximum permitted lot coverage is 35 percent) ; and

WHEREAS, the proposed enlargement will reduce the rear yard from 29’-10 ¼” to 23’-9 ½” (the minimum rear yard required is 30’-0”); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, the enlargement will maintain the complying side yard of 8’-1” and the existing non-complying side yard of 3’-11”, increasing the latter’s degree of non-compliance; and

WHEREAS, the enlargement will maintain the existing non-complying front yard of 8’-8 ½”; and

WHEREAS, initially, the applicant proposed a perimeter wall height of 21’-0” and a total height of 35’-0”, but reduced the heights to 20’-3 ½” and 34’-0”, respectively; and

WHEREAS, the Board notes that the proposed wall

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height and overall height complies with applicable R3-2 district requirements; and

WHEREAS, additionally, the applicant reduced the proposed FAR from 1.048 to 0.991, at the Board's request; and

WHEREAS, the Board notes that this FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, at hearing, the Board asked the applicant to submit photographs of and information about other homes in the area in order to establish a context for this enlargement; and

WHEREAS, specifically, the Board requested that the applicant establish a context for the proposed full encroachment of the front porch into the non-complying front yard; and

WHEREAS, the applicant submitted photographs of several homes on East 23rd Street that are comparable to the proposed home in this regard; and

WHEREAS, however, the Board remained unconvinced that the proposed front porch is compatible with the neighborhood and asked the applicant to remove it; and

WHEREAS, the Board notes that the front porch is now subject to DOB review; and

WHEREAS, the Board also asked the applicant to remove the garage from the plans as it did not appear to provide viable automobile access; and

WHEREAS, accordingly, with these modifications, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 18, 2006"-(13) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,966.56 sq. ft., a total FAR of 0.991, a perimeter wall height of 20'-3 1/2", and a total height of 34'-0", all as illustrated on the BSA-approved plans;

THAT the total attic floor area shall not exceed 502.13 sq. ft., as confirmed by the Department of Buildings;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled A-1 thru A-13, stamped July 18, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT DOB shall review and approve the size and location of the front and rear porches;

THAT DOB shall review and approve the location of any garage;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2006.

352-05-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Peter Procops, owner; McDonald's Corporation, owner.

SUBJECT – Application December 14, 2005 – Z.R. §73-243 proposed re-establishment of an expired special permit for an eating and drinking establishment with an accessory drive-through, located in a C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection at Beach Channel Drive, Block 15709, Lot(s) 101, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jeffrey Chester.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

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WHEREAS, the decision of the Queens Borough Commissioner, dated June 15, 2005, acting on Department of Buildings Application No. 402136023, reads:

“Proposed re-establishment of an expired special permit 49-94-BZ in a C1-2 zoning district, is contrary to ZR 32-31, refer to Board of Standards and Appeals for special permit.”; and

WHEREAS, this application, made pursuant to ZR §§ 73-243 and 73-03, is for the re-establishment of a special permit for an existing eating and drinking establishment with an accessory drive-through facility in a C1-2 (R5) zoning district, as well as for an amendment to the plans and an extension of the hours of operation; and

WHEREAS, a public hearing was held on this application on May 16, 2006, after due notice by publication in *The City Record*, with a continued hearing on June 20, 2006, and then to decision on July 18, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Queens, recommends approval of this application, on the condition that a “Do Not Enter” sign be installed at the Mott Avenue entrance to the drive-through; and

WHEREAS, the subject site is a 19,861 sq. ft. lot located on the southeast corner of Mott Avenue and Beach Channel Drive; and

WHEREAS, the subject lot is improved upon with an existing building, occupied by a McDonald’s fast food restaurant which contains 2,661 sq. ft. of floor area; and

WHEREAS, on June 16, 1998 under BSA Cal. No. 49-94-BZ, the Board granted a special permit pursuant to ZR § 73-243, authorizing a proposed drive-through facility as an accessory use to an eating and drinking establishment, for a period of five years to expire on June 16, 2003; and

WHEREAS, the applicant requests to re-establish the special permit for a period of five years, to make minor changes to the plans, and to extend the hours of operation; and

WHEREAS, the applicant represents that the special permit lapsed due to management oversight; and

WHEREAS, the applicant states that the site is operated in substantial compliance with the Board-approved plans from the 1998 grant; and

WHEREAS, the applicant represents that the site and drive-through facility provide reservoir space for a ten-car queue, as required; and

WHEREAS, the applicant has identified minor changes to the site which need to be legalized and additional minor changes which are proposed to the approved plans, none of which directly impacts the accessory drive-through; and

WHEREAS, specifically, the applicant notes that the site is lacking a full four-foot landscaping buffer adjacent to the residential uses as required as a condition of the original grant; and

WHEREAS, at hearing, the Board asked the applicant to restore the buffer; and

WHEREAS, the applicant submitted plans that show the restoration of the buffer; and

WHEREAS, as indicated on the revised site plan, this buffering consists of landscaping and fencing along the southwest corner of the lot; and

WHEREAS, additionally, the applicant proposes to remove the play area, and provide new landscaping, a new sidewalk and vestibule, and a new metal fence for the Mott Avenue frontage; and

WHEREAS, in response to the Community Board’s concerns about signage, the Board asked the applicant to document the signs at the site and address their compliance; and

WHEREAS, the applicant provided photographs depicting the signage and compliance with applicable zoning regulations; and

WHEREAS, the Board has reviewed the revised site plan and finds that it is acceptable; and

WHEREAS, the applicant represents that the facility causes minimal interference with traffic flow in the immediate vicinity because the existing restaurant does not generate significantly greater traffic flow than would be generated by other as of right commercial uses; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle; and

WHEREAS, the applicant has submitted photographs of the premises and the surrounding streets, which further supports this representation; and

WHEREAS, the applicant represents that the restaurant and drive-through do not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, in support of this representation, the applicant states that the modest volume of customer traffic does not impact nearby residential uses; and

WHEREAS, as to the hours of operation, the applicant requests an amendment to permit the drive-through to operate 24 hours, daily; and

WHEREAS, at hearing, the Board questioned the need for the extended hours; and

WHEREAS, the applicant responded that in order to remain competitive in its area, it needed to have unlimited hours of operation; and

WHEREAS, in support of this representation, the applicant provided information that shows that competing fast food restaurants, across the street and within close proximity, have unlimited hours of operation; and

WHEREAS, the Board has reviewed this information and agrees that the extended hours are necessary to the operation of the restaurant and will not create any negative impacts on adjacent uses; and

WHEREAS, based upon its review of the submitted evidence, the Board finds that the applicant has met the specific findings for a special permit set forth at ZR § 73-243; and

WHEREAS, the Board finds that under the conditions and

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safeguards imposed, the hazards or disadvantages to the community at large of such special permit use at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6NYCRR, Part 617.4; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and grants the re-establishment of a special permit for an existing eating and drinking establishment with an accessory drive-through facility in a C1-2 (R5) zoning district, which requires a special permit pursuant to ZR §§ 73-243 and 73-03, and for an amendment to the plans and an extension to the hours of operation; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 12, 2006"- (5) sheets; and *on further condition*:

THAT this permit shall be issued for a term of five years from July 18, 2006, the date of the grant, to expire on July 18, 2011;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the hours of operation shall be 24 hours, daily;

THAT the above conditions shall appear on the certificate of occupancy;

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT all signage shall conform with the underlying C1-2 district regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, July 18, 2006.

4-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Isaac

Tessler and Miriam Tessler, owners.

SUBJECT – Application January 5, 2006 – Special Permit Z.R. §73-622 for an enlargement of an existing single family residence to vary ZR §23-141 for open space and floor area and ZR §23-47 for less than the minimum rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1435 East 21st Street, East 21st Street between Avenue M and Avenue N, Block 7657, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT:

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 6, 2005, acting on Department of Buildings Application No. 302046015, reads, in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted Floor Area Ratio of .50.

Proposed plans are contrary to ZR 23-141 in that the proposed Open Space Ratio is less than the minimum required Open Space Ratio of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard of 20 feet is less than the minimum required rear yard of 30’.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, with a continued hearing on June 13, 2006, and then to decision on July 18, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the east side of East 21st Street between Avenue M and Avenue N; and

WHEREAS, the subject lot has a total lot area of 4,700 sq. ft., and is occupied by a 2,171.36 sq. ft. (0.46 FAR) single-family dwelling; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, in order to establish that the proposal constitutes an enlargement, the Board asked the applicant to

MINUTES

provide plans that clearly identified which portions of the home were being retained; and

WHEREAS, the applicant seeks an increase in the floor area from 2,171.36 sq. ft. (0.46 FAR) to 4,720.26 sq. ft. (1.0 FAR); the maximum floor area permitted is 2,350 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space from 3,632 sq. ft. to 2,531.43 sq. ft. (the minimum required open space is 3,525 sq. ft.) and decrease the open space ratio from 167 percent to 53.62 percent (the minimum required is 150 percent); and

WHEREAS, the proposed enlargement will reduce the rear yard from 35'-0" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the enlargement will reduce the complying side yard from 18'-6" to a complying 8'-0" and maintain the existing non-complying side yard of 4'-9", increasing the latter's degree of non-compliance (a minimum total of 13'-0" of side yards is required, with a minimum of 5'-0" per yard); and

WHEREAS, the enlargement will maintain the existing complying front yard of 15'-6"; and

WHEREAS, initially, the applicant proposed a perimeter wall height of 25'-0" and a total height of 41'-0", (the maximum perimeter wall height permitted is 25'-0"); the existing conditions are a perimeter wall height of 22'-0" and a total height of 36'-6"; and

WHEREAS, also, the applicant initially proposed an FAR of 1.06; and

WHEREAS, at the Board's suggestion, the applicant reduced the total height to 38'-0" to match the height of the adjacent building, the perimeter wall height to 24'-6", and the FAR to 1.0; and

WHEREAS, the Board notes that this FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, the Board notes that the proposed height still complies with applicable R2 district requirements; and

WHEREAS, at hearing, the Board asked the applicant to submit photographs of and information about other homes in the area in order to establish a context for this enlargement; and

WHEREAS, specifically, the Board requested that the applicant establish a context for the proposed height; and

WHEREAS, the applicant submitted information on homes in the vicinity that are comparable in height to the proposed home; and

WHEREAS, upon review of the submitted information, the Board notes a number of comparably-sized homes in the immediate area, and finds the proposed home to be compatible with these homes; and

WHEREAS, as noted above, the Board also asked the applicant to submit documentation on the portions of the foundation, walls, and floors to be retained; and

WHEREAS, the applicant submitted coded plans

indicating what was being retained; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and § 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 18, 2006"-(14) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,720.26 sq. ft., a total FAR of 1.0, a perimeter wall height of 24'-6", and a total height of 38'-0", all as illustrated on the BSA-approved plans;

THAT the total attic floor area shall not exceed 537.33 sq. ft., as confirmed by the Department of Buildings;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled P1, P1a, P2, P3, P4, P5, P6, P7, P8, P9, P10, P11, P12 and P13, stamped July 18, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT DOB shall review and approve the location of any garage;

THAT DOB shall review and approve the location of any porch;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

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THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2006.

290-02-BZ thru 314-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner. (Tapei Court)

SUBJECT – Application October 24, 2002 – under Z.R. §72-21 – to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district’s equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners’ association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-01/03/05/07/09/11/13/17/19/15/21/21/23/25/27/29/31/33/35/20/22/24/26/28/30/32/34 Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for continued hearing.

151-05-BZ

APPLICANT – The Law Office of Frederick A. Becker for 100 Varick Street, LLC, Owner.

SUBJECT – Application June 16, 2005 – Zoning Variance (use) pursuant to Z.R. §72-21 to allow a proposed ten (10) story residential building containing seventy-nine (79) dwelling units located in an M1-6 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 100 Varick Street, located on the easterly side of Varick Street between Watts and Broome Streets, Block 477, Lots 35 and 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker, Pedro Marmolejos and Michael Even.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for decision, hearing closed.

165-05-BZ

APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.

SUBJECT – Application July 25, 2005 – Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.

PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156’-3” East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jeffrey A. Chester.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 1:30 P.M., for continued hearing.

199-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Stefano Troia, owner.

SUBJECT – Application August 23, 2005 – under Z.R. §72-21 to allow a proposed twelve (12) story residential building with ground floor retail containing eleven (11) dwelling units in an M1-6 Zoning District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 99 Seventh Avenue, located on the southeast corner of 7th Avenue and West 27th Street (Block 802, Lot 77), Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Joseph Morsellino and Robert Pauls.

For Opposition: Jack Lester.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

204-05-BZ

APPLICANT – Harold Weinberg, for Amalia Dweck, owner.

SUBJECT – August 26, 2005 – Pursuant to ZR §73-622, Special Permit for an enlargement of a two-family residence which increases the degree of non-compliance for floor area, open space, lot coverage and side yards is contrary to ZR§§23-141 and 23-461. The application also proposed an as-of-right change from a one-family dwelling to a two-family dwelling.

PREMISES AFFECTED – 2211 Avenue T, north side, 57’ east of East 22nd Street, between East 22nd and East 23rd Streets, Block 7301, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for continued hearing.

311-05-BZ/310-05-A

APPLICANT – Joseph P. Morsellino, Esq., for Bernard F. Dowd, owner.

SUBJECT – Application October 19, 2005 – Special Permit pursuant to Z.R. Section 73-27 to legalize the existing second floor use in an existing funeral establishment. The site is located in a C4-2 zoning district. A case (310-05-A) was filed with the BZ case on 10/19/05 since the C of O lapsed for the prior A case (232-52-A).

PREMISES AFFECTED – 165-18/28 Hillside Avenue, Northeast corner Hillside Avenue and Merrick Boulevard, Block 9816, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Joseph Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

363-05-BZ

APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.

SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. sections 23-141, 23-45(a), 23-462(a), 23-861, and 25-23.

PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Hirshman, Amy Klet and Arman Garman.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

32-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, by Steven M. Sinacori, for Manhattan College, owner.

SUBJECT – Application February 28, 2006 – Special permits pursuant to Z.R. sections 73-482 and 73-49 to allow an accessory group parking facility in excess of 150 spaces and to allow roof-top parking. Zoning variance pursuant to Z.R. Section 72-21 is also proposed to allow proposed parking facility to violate applicable height and setback requirements of Z.R. Section 33-431. Premises is located within an R6/C2-

3 zoning district.

PREMISES AFFECTED – 5935 Broadway, east side of Broadway between 242nd Street and Manhattan College Parkway, Block 5776, Lot 632, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Richard Bowers, Roy Rosenbain, Charles Chisolin and Steve Sinacori.

For Opposition: C. Adnian DeRoo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

54-06-BZ

APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.

SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. §72-21 to permit the development of a three-story & cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family dwellings which would be demolished as part of the proposal. The proposal seeks to vary ZR Sections 113-51 (Floor Area); 113-55 & 23-631 (Perimeter Wall Height, Total Height & Sky Exposure Plane); 113-542 & 23-45 (Front Yard & Setback); 113-543 & 23-461(a) (Side Yard); 113-544 (Rear Yard); 113-561 & 23-51 (Parking); and 113-22 (Loading Berth).

PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik, David Shteierman, Rabbi Goodfreund, Rabbi Chaim Weinberg, Rabbi Bluchok, Mordechai Biser, Yitzchok Perbis and others.

For Opposition: Stuart Klein, Marin Pope, Michael Gregorio, Morton Pupko, Pinny Sofier, Traci Schanke, David Kramer, Lina G. Kee and others.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. 42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of

MINUTES

Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Melaney McMurray.

ACTION OF THE BOARD – Laid over to September
12, 2006, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 6:40 P.M.

BULLETIN

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August 4, 2006

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SATISH BABBAR, *Vice-Chair*

CHRISTOPHER COLLINS

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Tuesday, July 25, 2006**

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160-06-BZ

2199 Richmond Avenue, Corner of Richmond Avenue and Travis Avenue, Block 2361, Lot 1,7, Borough of **Staten Island, Community Board: 2**. Under 72-21 - To permit two (2) proposed commercial developments.

161-06-BZ

3349 Webster Avenue, Wester Avenue south of Gun Hill Road, Block 3355, Lot 121, Borough of **Bronx, Community Board: 7**. Under 72-21 - To permit the proposed residential development, low income housing.

162-06-A

2852 Faber Terrace, Intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 161, Borough of **Queens, Community Board: 14**. General City Law Section 35 - to permit the proposed otherwise as of right residential development in the partial bed of Faber Terrace

163-06-BZ

72-36 43rd Avenue, 74th Street and Railroad Right-of Way, Block 1354, Lot 25 and 27, Borough of **Queens, Community Board: 4**. Under 72-21 - Proposed construction of two (2) three family dwellings on one zoning lot in a predominatly built-up area, with only one parking space in each building.

164-06-A

148 East 63rd Street, South side of East 63rd Street, 120' east of Park Avenue, Block 1397, Lot 48, Borough of **Manhattan, Community Board: 8**. Appeal of the June 30, 2006 Padlock Order issued by the Department of Buildings reccomending the closure of the premises at 148 East 63rd Street based on the illegal use of the basement , first, second and third floor.

165-06-A

2848 Farber Terrace, Intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 61, Borough of **Queens, Community Board: 14**. General City Law Section 35 - To permit the proposed otherwise as of right residential development in the partial bed of Faber Terrace.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

SEPTEMBER 12, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 12, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

341-43-BZ

APPLICANT – Martyn & Don Weston, for 3319 Holding Corp., owner.

SUBJECT – Application June 8, 2006 - Extension of Term/Amendment filed pursuant to ZR§§11-411 & 11-412, to permit the continuance of a storage warehouse (UG 16) in a C8-2 & R5 zoning district for an additional 10 years. The application also seeks an amendment for the removal of an internal partition and the change from a chain link enclosure to a masonry enclosure of the accessory parking area.

PREMISES AFFECTED – 3319 Atlantic Avenue, northeast corner Euclid Avenue, Block 4145, Lots 1, 13, 23, Borough of Brooklyn.

COMMUNITY BOARD #5BK

595-44-BZ, Vol. II

APPLICANT – Law Office of Howard Goldman, for Cinzia 30 CPS, Inc.

SUBJECT – Application July 7, 2006 - Pursuant to ZR 11-413 to permit the change of use on the entire 15th floor (Penthouse) from UG12 Restaurant to a UG6 Office Space. Floors one thru fourteen are a UG6 non-resident doctors' offices. The premise is located in R-10H zoning district.

PREMISES AFFECTED – 30 Central Park South, south side of street, 320' east of Avenue of the Americas, Block 1274, Lot 1055, Borough of Manhattan.

COMMUNITY BOARD #5M

866-49-BZ, Vol. III

APPLICANT – Carl. A. Sulfaro, Esq., for 2912 Realty, LLC, owner.

SUBJECT – Application June 12, 2006 - Pursuant to ZR 11-411 for an Extension of Term for ten years for a gasoline service station (Shell Station) which expired on October 7, 2006, a Waiver of the Rules of Practice and Procedure for filing subsequent to the expiration of term and an Amendment to legalize the change in signage, new storefront and replacement of the wrought iron fencing with white vinyl fencing. The premise is located in an R3-X zoning district.

PREMISES AFFECTED – 200-01/07 47th Avenue, northeast corner of 47th Avenue and Francis Lewis Boulevard, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

558-51-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application April 19, 2006 - pursuant to ZR§11-411 to extend the term of a Automotive Service Station expiring December 21, 2006. The application does not seek any physical changes from the previous approval.

PREMISES AFFECTED – 68-22 Northern Boulevard, southwest corner of Northern Boulevard and 69th Street, Block 1186, Lot 19, Borough of Queens.

COMMUNITY BOARD #3Q

23-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yossi Kraus, owner.

SUBJECT – Application July 19, 2006 - Pursuant to ZR 73-11 & 73-622 this application is for an amendment to a previously granted Special Permit for the enlargement of a single family home for the proposed increase in floor area from .62 to 1.002 (+1,141.6 sq.ft.). The proposed plans are contrary to ZR 23-141(a) -floor area, open space; 23-48 - minimum side yard and 23-47-minimum rear yard. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1150 East 23rd Street, west side, Block 7622, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEALS CALENDAR

34-06-A

APPLICANT – Victor K. Han, for Dimitrios Halkiadakis, owner

SUBJECT – Application March 1, 2006 – proposed construction of a three family, three story residence with accessory three car garage located within the bed of a mapped street, contrary to Section 35 of the General City Law. Premises is located in a R4 Zoning District.

PREMISES AFFECTED – 41-23 156th Street, east side of 156th Street, 269' north of Sanford Avenue, Block 5329, Lot 15, Borough of Queens.

COMMUNITY BOARD #7Q

93-06-A

APPLICANT – Sheldon Lobel, P.C., for Mei Hsien Peng, owner

SUBJECT – Application May 9, 2006 - Proposed construction of a 3 story + attic four family dwelling fronting on a unmapped street contrary to General City Law

CALENDAR

Section 36 and does not have adequate perimeter street frontage as per Building Code 27-291. Premises is located within the R5 Zoning district.

PREMISES AFFECTED – 50-08 88th Street, westerly side of 88th Street south of 50th Avenue, Block 1835, Lot 36, Borough of Queens.

COMMUNITY BOARD #4Q

120-06-A

APPLICANT – Eric Palatnik, P.C., for Harry & Brigitte Schalchter, owners.

SUBJECT – Application June 12, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Current zoning district is R4-1

PREMISES AFFECTED – 1427 East 17th Street, between Avenue N and Avenue O, Block 6755, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #14BK

120-06-A

APPLICANT – Eric Palatnik, P.C., for Harry & Brigitte Schalchter, owners.

SUBJECT – Application June 12, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Current zoning district is R4-1

PREMISES AFFECTED – 1427 East 17th Street, between Avenue N and Avenue O, Block 6755, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #14BK

SEPTEMBER 12, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 12, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

33-05-BZ

APPLICANT– Sheldon Lobel, P.C., for Yeshiva Tiferes Yisroel, owner.

SUBJECT – Application February 24, 2005 - Variance pursuant to Z.R. 72-21 to permit the construction of a non-complying school (Yeshiva Tiferes Yisrael). The proposed Yeshiva will be constructed on lots 74, 76, 77, 78 and 79 and will be integrated with the existing Yeshiva facing East 35th Street which was approved in a prior BSA grant on lots 11, 13, 15, and 16. The existing and proposed Yeshiva and their associated lots will be treated as one zoning lot. The subject zoning lot is located in an R5 zoning district. The requested waivers and the associated Z.R. sections are as follows: Floor Area Ratio and Lot Coverage (24-11); Side Yard (24-35; Rear Yard (24-36); Sky Exposure Plane (24-521); and Front Wall Height (24-551).

PREMISES AFFECTED – 1126/30/32/36/40 East 36th Street, west side of East 36th Street, between Avenues K and L, Block 7635, Lots 74, 76, 77, 78, 79, Borough of Brooklyn.

COMMUNITY BOARD #18BK

104-06-BZ

APPLICANT– Eric Palatnik, P.C., for Martin Menashe, owner.

SUBJECT – Application May 23, 2006 - Pursuant to ZR §73-622 Special Permit to partially legalize and partially alter a long standing enlargement to an existing single family residence which is contrary to ZR 23-141 for floor area and open space and ZR 23-46 for side yard requirement. The premise is located in an R-2 zoning district. This current application filing has a previous BSA Ca. #802-87-BZ.

PREMISES AFFECTED – 3584 Bedford Avenue, north of Avenue “O”, Block 7678, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

106-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Mendel Bobker, owner.

SUBJECT – Application May 23, 2006 - Pursuant to ZR §73-622 Special Permit to allow the enlargement of a two-family residence which exceeds the allowable floor area ratio per ZR 23-141, side yards less than the minimum per ZR 23-461 and proposes a rear yard less than the minimum required per ZR 23-47. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1436 East 28th Street, west side

CALENDAR

of East 28th Street, 280 between Avenue N and Kings
Highway, Block 7681, Lot 62, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, JULY 25, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar, and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, May 9, 2006 as printed in the bulletin of May 19, 2006, Volume 91, No. 20. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

200-24-BZ

APPLICANT – Stephen Ely, for Ebed Realty c/o Ruben Greco, owner.

SUBJECT – Application May 11, 2006 - Pursuant to Rules of Practice and Procedure to reopen and amend the resolution for the Extension of Time to Obtain a Certificate of Occupancy, for a bookstore and distribution, which expired on April 12, 2006.

PREMISES AFFECTED – 3030 Jerome Avenue, aka 3103 Villa Avenue, 161.81' south of East 204th Street, Block 3321, Lot 25, Borough of The Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Stephen Ely.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a prior grant, which expired on April 12, 2006; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in the *City Record*, and then to decision on July 25, 2006; and

WHEREAS, on May 25, 1924, under the subject calendar number, the Board permitted the construction of a storage garage at the subject premises; and

WHEREAS, on March 29, 1960, the Board reopened and amended the resolution to permit a change in use from storage garage to auto repair, for a term of ten years; said term was extended at various times; and

WHEREAS, on March 17, 2001, the Board legalized the change of use from automotive repair (Use Group 16) to a retail food store (Use Group 6) and to extend the term of the variance; and

WHEREAS, on November 26, 2002, the Board reopened and amended the resolution to permit a change of use from retail

food store to a bookstore and to extend the time to complete construction and obtain a new certificate of occupancy; and

WHEREAS, most recently, on April 12, 2005, the Board amended the grant to permit an extension of time to obtain a certificate of occupancy, for the book store and distribution use, to expire on April 12, 2006; and

WHEREAS, the applicant states that the reason for the requested extension of time is due to financial considerations; and

WHEREAS, the applicant states that DOB has approved the BSA-approved plans and that all permits except for the electrical work are issued; and

WHEREAS, further, the applicant states that the remaining work includes minor plumbing and interior finishing work; and

WHEREAS, therefore, the Board has determined that the evidence in record supports the grant of the requested extension.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on March 25, 1924, so that as amended this portion of the resolution shall read: “to permit an extension of the time to obtain a certificate of occupancy, for a period of one year from the date of this resolution to expire on July 25, 2007; on condition:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 200608896)

Adopted by the Board of Standards and Appeals, July 25, 2006.

739-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Co., owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application May 4, 2006 – Reopening for an extension of term of a special permit pursuant to ZR§73-03 to permit an existing shopping center, the conversion of a retail store to an amusement arcade.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

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THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term of the special permit which expired on April 10, 2006; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to July 25, 2006 for decision; and

WHEREAS, initially, Community Board 7, Queens, was in opposition to the application, citing concerns that the site did not provide access to restrooms and that patrons were using the restrooms at neighboring businesses; as discussed below, the Community Board later dropped its opposition; and

WHEREAS, on February 8, 1977, the Board granted an application permitting, in an existing shopping center, the conversion of a retail store to an amusement arcade for a term of one year; and

WHEREAS, at the time of the initial grant, the location of the arcade was 212-65 26th Avenue; in 1997, the Board permitted the relocation of the arcade to the subject premises; and

WHEREAS, the applicant met with the Community Board and agreed to place a sign indicating that there was a restroom at the site which could be accessed by asking the management for a key; and

WHEREAS, the Board noted that construction work being done at the mall, unrelated to the subject site, impedes the applicant's ability to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that DOB will adjust the old certificate of occupancy for the mall to reflect that the arcade is in compliance even if the entire mall is not; and

WHEREAS, the applicant currently seeks a one-year extension to the term of the special permit; and

WHEREAS, based upon the submitted evidence, the Board finds that the instant application is appropriate to grant, with conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals, *reopens and amends* the resolution, said resolution having been adopted on January 6, 1981, as later amended, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional one year from April 10, 2006 expiring on April 10, 2007; *on condition* that the all work/on-site conditions shall substantially conform to drawings as filed with this application, marked 'January 19, 2005' - (3) sheets; and *on further condition*:

THAT the term of this grant shall be for one year from the expiration of the prior grant, expiring on April 10, 2007;

THAT a sign indicating that a key for the restroom is available from the manager shall be posted at the site;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the above conditions shall appear on the certificate of occupancy;

THAT the operation of the arcade subject premises shall

comply with the previously approved Board plans, and all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

(DOB Application No. 401710430)

Adopted by the Board of Standards and Appeals, July 25, 2006.

132-97-BZ

APPLICANT – Alan R. Gaines, Esq., for Deti Land, LLC, owner; Fiore Di Mare LLC, lessee.

SUBJECT – Application June 7, 2005 and January 3, 2006 – Extension of Term/Amendment/Waiver for an eating and drinking establishment with no entertainment or dancing and occupancy of less than 200 patrons, UG 6 located in a C-3 (SRD) zoning district. Proposed legalization of four on-site parking spaces for an eating and drinking establishment (Fiore Di Mare) located in the bed of a mapped street, is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 227 Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island.

COMMUNITY BOARD# 3SI

APPEARANCES –

For Applicant: Joseph D. Manno, Esq.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an amendment for an eating and drinking establishment to permit an extension of term of the special permit for onsite parking, which expired on March 3, 2003, and the legalization of a deck; and

WHEREAS, the applicant also brought a companion case under BSA Cal. No. 24-06-A, which requested the legalization of four parking spaces within the bed of a mapped street, contrary to Section 35 of the General City Law; and

WHEREAS, the applicant subsequently withdrew this application; and

WHEREAS, a public hearing was held on this application on July 19, 2005, after due notice by publication in *The City Record*, with continued hearings on September 13, 2005, October 18, 2005, December 6, 2005, February 14, 2006, April 11, 2006, June 6, 2006 and July 11, 2006, and then to decision

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on July 25, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 3, Staten Island and the Borough President recommended disapproval of this application citing concerns about parking and the permanent nature of the deck; and

WHEREAS, the site is located on the west side of Mansion Avenue, 94 ft. north of the corner formed by the intersection of Cleveland and Mansion Avenues; and

WHEREAS, the site is located within a C3 Special South Richmond (SRD) zoning district, has a lot area of 12,735 sq. ft., and is occupied by an existing eating and drinking establishment (Fiore Di Mare); and

WHEREAS, currently there are thirteen accessory parking spaces – 4 in the front and nine in the rear; however, the four in the front are not legal and will be removed; and

WHEREAS, on March 3, 1998, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-242, authorizing the change in use from a Use Group 14 fishing tackle shop to a Use Group 6 eating and drinking establishment, with no entertainment or dancing, an occupancy of less than 200 persons, and nine accessory parking spaces; and

WHEREAS, the applicant seeks to legalize a covered deck, which was constructed without DOB permits; and

WHEREAS, the applicant represents that this deck, which is located at the front of the building and accommodates additional restaurant seating was constructed in 2000, when under different ownership; and

WHEREAS, however, the Board does not give any weight to the applicant's claim that the illegal condition was in place at the time of purchase; and

WHEREAS, at hearing, the Board asked the applicant if the deck was necessary for the viability of the restaurant; and

WHEREAS, the Board expressed concern that the occupancy would increase and more customers would contribute to the parking problems noted by the community; and

WHEREAS, the applicant responded that the deck provides additional seasonal business and that it would be a hardship to remove it; and

WHEREAS, in response to the Board's concerns, the applicant agreed that the total of 15 tables would not increase when the deck is in use, but that the existing tables would be re-configured to allow for outside seating; and

WHEREAS, at hearing, the Board asked the applicant to describe the deck in more detail; and

WHEREAS, the applicant responded that the deck does not have heating or air-conditioning, and its use is therefore limited throughout the year; and

WHEREAS, further, the applicant agreed to not make the deck available year-round; and

WHEREAS, the Board asked the applicant if there were other measures that could be taken to reinforce the assertion that the deck was a seasonal addition to the restaurant; and

WHEREAS, at the Board's suggestion, the applicant agreed to remove the permanent roof over the deck and replace it with a retractable awning; and

WHEREAS, the applicant submitted revised plans illustrating the change to the roof; and

WHEREAS, the Board has reviewed the revised plans and is satisfied that the deck will only be used for seasonal use; and

WHEREAS, the Board also expressed concern about the amount of accessory parking, particularly because the four illegal parking spaces located at the front of the restaurant will be removed; and

WHEREAS, the applicant initially proposed relocating the four spaces at the front of the building to the attended lot at the rear; and

WHEREAS, upon review of the parking layout, the Board determined that the rear lot could not feasibly accommodate 13 spaces; and

WHEREAS, the Board asked the applicant if it was possible to secure additional parking offsite since the small lot at the rear could not accommodate more than the existing nine spaces; and

WHEREAS, in response, the applicant entered into a written agreement with Staten Island Yacht Sales to allow that four parking spaces at its site across the street be reserved for patrons of the subject restaurant; and

WHEREAS, based upon the above, the Board finds that the application for an extension of term is appropriate, so long as the restaurant complies with all relevant conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, said resolution having been adopted on March 3, 1998, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from March 3, 2003, and to permit the legalization of the seasonal deck; *on condition* that all work and site conditions shall comply with drawings marked 'Received July 11, 2006'– (3) sheets and 'Received July 25, 2006'– (2) sheets; and *on further condition*:

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

THAT the term of this grant shall be for five years from the expiration of the prior grant, to expire on March 3, 2008;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the use of the deck shall be limited to the period of April 15 through October 15;

THAT the occupancy, including the use of the deck, shall be limited to 60 people at tables and 13 people at the bar;

THAT nine attended parking spaces shall be provided onsite, at the rear of the lot; and

THAT four offsite parking spaces shall be provided at State

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Island Yacht Sales, per written agreement, that shall be effective for the entire term of the special permit;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB App. No. 500754061)

Adopted by the Board of Standards and Appeals, July 25, 2006.

24-06-A

APPLICANT – Alan R. Gaines, Esq., for Deti Land, LLC, owner; Fiore Di Mare LLC, lessee.

SUBJECT – Application June 7, 2005 and January 3, 2006 – Extension of Term/Amendment/Waiver for an eating and drinking establishment with no entertainment or dancing and occupancy of less than 200 patrons, UG 6 located in a C-3 (SRD) zoning district. Proposed legalization of four on-site parking spaces for an eating and drinking establishment (Fiore Di Mare) located in the bed of a mapped street, is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 227 Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island.

COMMUNITY BOARD# 3SI

APPEARANCES –

For Applicant: Joseph D. Manno, Esq.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

Adopted by the Board of Standards and Appeals, July 25, 2006.

324-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Janine Realty, LLC, owner.

SUBJECT – Application December 8, 2005 – Amendment to a previously granted Variance ZR72-21 to allow the conversion of three floors in a commercial building to residential use.

PREMISES AFFECTED – 1077 Bay Street, Block 2825, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: John Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, to permit the conversion of three floors from commercial to residential use; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on July 25, 2006; and

WHEREAS, Community Board 1, Staten Island recommends approval of this application; and

WHEREAS, the subject site is a 63,460 sq. ft. lot located on the north side of Sylvaton Terrace between Bay and Edgewater Streets, and is within an M2-1 zoning district; and

WHEREAS, on February 4, 2003, the Board granted an application pursuant to ZR § 72-21, to permit the construction of a mixed-use development contrary to ZR § 42-00; and

WHEREAS, the grant permitted the construction of a new five-story, forty-unit residential building with commercial use in the cellar, the retrofit of an existing building to create a five-story office building, and a new three-story parking structure; and

WHEREAS, the applicant represents that, subsequent to the issuance of the variance, the property was sold and no construction has begun; and

WHEREAS, further, the applicant represents that construction has been halted as the viability of the project has been re-evaluated; and

WHEREAS, the applicant asserts that there is not enough demand for the commercial space to warrant the full conversion of the five-story building to office use; and

WHEREAS, the applicant has concluded that, by converting the top three floors of the existing building to residential use, it would still be possible to realize a reasonable return on the property; and

WHEREAS, thus, the applicant is requesting an amendment to the previously-granted variance to permit residential use on floors three, four, and five of the existing building, adding ten residential units; and

WHEREAS, the Board notes that the balance of the property will be developed in conformance with the BSA-approved plans and that the sole difference will be a reduction in the amount of commercial floor area at the site from 29,584 sq. ft. to 15,462 sq. ft. and the resultant increase in the residential floor area from 27,858 sq. ft. to 41, 950 sq. ft.; and

WHEREAS, thus, the commercial FAR will change from 0.47 to 0.25 and the residential will change from 0.44 to 0.66; and

WHEREAS, the applicant does not seek any other modifications; and

WHEREAS, the Board agrees that evidence in the record shows that the proposed commercial use of all five floors of the existing building has been unmarketable and that the conversion

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of additional floor area for residential use makes the project viable; and

WHEREAS, the Board therefore concludes that the proposed conversion of the three floors is an acceptable modification that does not affect the prior findings that the original proposal was compatible with the neighborhood character and that the relief granted was the minimum necessary; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on February 4, 2003, so that as amended this portion of the resolution shall read: "to permit the conversion of the third through fifth floors of the existing five-story building in a M2-1 zoning district from commercial use to residential use; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received December 8, 2006'-(1) sheet, and 'Received May 18, 2006'-(6) sheets; and *on further condition*:

THAT the floor area and FAR parameters of the subject five-story office building shall be as follows: 15,462 sq. ft. of commercial floor area (0.25 FAR) and 41,950 sq. ft. of residential floor area (0.66 FAR);

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review for compliance with all applicable light and air requirements and, for the required separation between commercial and residential uses;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 500457882)

Adopted by the Board of Standards and Appeals, July 25, 2006.

106-76-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Amerada Hess Corp., owner.

SUBJECT – Application May 2, 2006 – Pursuant to ZR 72-01 to reopen and amend the BSA resolution to construct a new one story accessory convenience store, replace the existing metal canopy, pumps and pump islands and to remove two curb cuts and replace with one curb cut. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 129-15 North Conduit Avenue, northeast corner of 129th Street, Block 11863, Lot 12, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for decision, hearing closed.

998-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Ldk Realty Inc., owner.

SUBJECT – Application April 10, 2006 – Reopening for an extension of term of variance permitting accessory parking to a eating and drinking establishment (UG-6) in an R3-2 zoning district, contrary to section 22-10 of the zoning resolution. The current term expired on April 10, 2004. Staten Island Community Board 2.

PREMISES AFFECTED – 2940/4 Victory Boulevard, south side of Victory Boulevard, 25.47' west of Saybrook Street, Block 2072, Lots 57, 65, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

203-92-BZ

APPLICANT – Sullivan, Chester & Gardner, P.C., for Austin-Forest Assoc., owner; Lucille Roberts Org., d/b/a Lucille Roberts Figure Salon, lessee.

SUBJECT – Application January 26, 2005 – Extension of Term / Amendment / Waiver for a physical culture establishment. The premise is located in an R8-2 zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side, 333' west of 71st Avenue, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for continued hearing.

291-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Torah Academy High School, owner.

SUBJECT – Application May 9, 2006 - Extension of Time to complete construction of a Special Permit, Use Group 3 for a yeshiva (Torah Academy High School) which expired on April 9, 2006. The premise is located in an C8-2 zoning

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district.

PREMISES AFFECTED – 2316-2324 Coney Island Avenue, Block 7112, Lots 9, 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for decision, hearing closed.

189-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Bill Wolf Petroleum Corp., owner.

SUBJECT – Application June 14, 2006 – Extension of Time/Waiver to complete construction and obtain a Certificate of Occupancy for an automotive service station with an accessory convenience store which expired on October 21, 2005. The premise is located in a C2-2/R-5 zoning district.

PREMISES AFFECTED – 836 East 233rd Street, southeast corner of 233rd Street and Bussing Avenue, block 4857, Lots 44, 41, Borough of The Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rhinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for decision, hearing closed.

362-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Reiss Realty Corporation, owner.

SUBJECT – Application June 1, 2006 – Extension of Time to obtain a Certificate of Occupancy for an accessory parking lot to a commercial use group which expired on May 11, 2006. The premise is located in an R8 zoning district.

PREMISES AFFECTED – 428 West 45th Street, south side of West 45th Street, between 9th and 10th Avenues, Block 1054, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Josh Rhinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

134-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Gaspare Colomone, owner.

SUBJECT – Application May 31, 2005 – Proposed construction of a three dwellings, which lies in the bed of a mapped street (67th Street) which is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 53-31 67th Street, 53-33 67th Street, and 67-02 53rd Road, Block 2403, Lot 117, 217, 17, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 6, 2005, acting on Department of Buildings Application Nos. 401389724, 401389706, and 401389715 reads, in pertinent part:

“Respectfully request to have this folder for BSA stamped denied; building contrary to GCL 35.”; and

WHEREAS, a public hearing was held on this application on May 9, 2006 after due notice by publication in the *City Record*, to continued hearing on June 6, 2006 and July 11, 2006, and then to decision on the July 25, 2006; and

WHEREAS, by letter dated, January 17, 2006 the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 25, 2005, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated November 28, 2005, the Department of Transportation (DOT) states that it has reviewed the above project and requests that a turnaround be provided at the dead end of 67th Street to improve traffic circulation; and

WHEREAS, by letter May 23, 2006, the applicant contends that compliance with DOT’s recommendation would require the applicant to secure an easement from the adjacent property owner; and

WHEREAS, the Board accepts the applicant’s proposal without the turnaround because the Fire Department is satisfied with the subject proposal and DOT does not have any plans to acquire the property; and

WHEREAS, accordingly, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

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Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 6, 2005, acting on Department of Buildings Application Nos. 401389724, 401389706, and 401389715, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received July 24, 2006"–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2006.

354-05-BZY

APPLICANT – Cozen & O'Connor for Global Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a 62 unit 11 story multiple dwelling under the prior Zoning R6. New Zoning District is R6B/ C2-3 as of November 16, 2005.

PREMISES AFFECTED – 182 15th Street, Brooklyn, south side of 15th Street, 320 feet west of 5th Avenue, Block 1047, Lot 22 Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the required foundation of a proposed eleven-story multiple dwelling, filed on behalf of the developer; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with a continued hearing on April 25, 2006; and

WHEREAS, on April 25, 2006, the hearing was closed and the application was scheduled for decision on June 13, 2006; and

WHEREAS, on June 13, 2006, the hearing was reopened for submission of further evidence; after this evidence was submitted and testimony was taken, the hearing was again closed and the application was re-scheduled for decision on July 25, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 7, Brooklyn, opposed the application, stating that the foundation was not complete and that several stop work orders and violations were issued; and

WHEREAS, additionally, the South Park Slope Community Group and the Concerned Citizens of Greenwood Heights opposed the application, stating that excavation was not complete, that work was done after hours, and that demolition occurred without a mechanical demolition permit; and

WHEREAS, certain elected officials, including State Senator Velmanette Montgomery, State Assemblyman James Brennan, Public Advocate Betsy Gotbaum, and City Councilmember Sara M. Gonzalez, also provided testimony in opposition to the application; and

WHEREAS, additionally, a group of neighbors to the site opposed the application, and were represented by counsel (hereinafter, "Opposition Counsel"); and

WHEREAS, the Board notes that some of the testimony provided by the above individuals and entities related directly to the application and the supporting evidence submitted by the applicant, as well as the technical findings set forth at ZR § 11-331; and

WHEREAS, some of the opposition testimony, however, reflected a general objection to any development on the site that does not comply with the new zoning district parameters (discussed below); and

WHEREAS, the Board understands that many community residents were particularly concerned about the size of the proposed building; and

WHEREAS, while testimony that reflected this sentiment was accepted into the record, the Board's determination as reflected herein is guided by applicable ZR provisions and certain legal principles, and was based on consideration of the legal claims made by the developer as well as the opposition's responses to these claims; and

WHEREAS, the subject site is located on the south side of 15th Street, 320 feet west of Fifth Avenue; and

WHEREAS, the subject site has a total lot area of 25,281 sq. ft.; and

WHEREAS, the site is proposed to be developed with an eleven-story, 62-unit multiple dwelling (hereinafter, the "Proposed Development"); and

WHEREAS, on July 20, 2004, the developer filed an application with the Department of Buildings (DOB) for a New Building permit, under Application No. 301791318-01-NB, for the Proposed Development; DOB subsequently approved this application on December 15, 2004; and

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WHEREAS, on July 13, 2005, DOB issued demolition permits (301976556-01-DM and 301976565-01-DM), a construction fence permit (301976556-01-EQ-FN) and a shed permit (301976556-02-EQ-SH); and

WHEREAS, on September 12, 2005, DOB issued permits for a construction fence (301791318-01-EQ-FN) and a sidewalk shed (301791318-02-EQ-SH); and

WHEREAS, also on September 12, 2005, DOB approved a post-approval amendment to the New Building Permit application, and then issued New Building Permit No. 301791318-01-NB (hereinafter, the "NB Permit"); and

WHEREAS, on October 4, 2005, subsequent to a special audit review of the NB Permit, DOB issued a letter to the developer providing notice of its intent to revoke the NB Permit based on the objections raised during the audit; a stop work order (the "SWO") was also issued on this date; and

WHEREAS, on November 11, 2005, DOB rescinded its notice of intent to revoke, finding that the objections were successfully resolved by the developer; the SWO was also lifted; and

WHEREAS, on November 14, 2005, DOB formally approved the revised plans that responded to the objections; and

WHEREAS, Opposition Counsel contested the validity of the NB Permit, but DOB confirmed that it was lawful when issued and in effect from September 12, 2005 (when it was initially issued) until October 4, 2005 (when the SWO was issued), and then from November 11, 2005 (when the intent to revoke was rescinded) until November 16, 2005 (the date of the rezoning); and

WHEREAS, when the NB Permit was issued and when construction commenced, the site was within an R6 zoning district; and

WHEREAS, the Proposed Development complied with the R6 zoning in terms of height and floor area; and

WHEREAS, however, as noted above, on November 16, 2005 (hereinafter, the "Rezoning Date"), the City Council voted to enact the Park Slope South rezoning proposal, which changed the site's zoning from R6 to R6B; and

WHEREAS, the Proposed Development would not comply with the new R6B district provisions concerning height and floor area; and

WHEREAS, specifically, the Proposed Development has a height of 131 feet (50 feet is the maximum permitted in the R6B zoning district) and an FAR of 2.38 (2.0 is the maximum permitted); and

WHEREAS, because the Proposed Development violated these provisions of the R6B zoning and work on the required foundation was not completed by the Rezoning Date, the NB Permit lapsed by operation of law; and

WHEREAS, the developer of the Proposed Development now applies to the Board to renew the NB Permit pursuant to ZR § 11-331, so that the Proposed Development may be fully constructed under the prior R6 zoning; and

WHEREAS, ZR § 11-331 reads, in pertinent part: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to

a person with a possessory interest in a zoning lot, authorizing a minor development . . . such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date . . . In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, the developer asserts that excavation was completed and that the required foundation was nearly complete as of November 15, 2005, one day prior to the Rezoning Date; and

WHEREAS, after the subject application had been filed, DOB informed the Board that it had issued a violation for mechanical demolition without the required permit and that this fact had not been disclosed by the developer in its initial application papers; and

WHEREAS, the violation (ECB Violation Number 34487161J), issued on August 23, 2005, noted, in sum and substance, that mechanical demolition was occurring at the rear of the site with a Volvo excavator, that no safety zone was provided, and that DOB records did not reflect a mechanical demolition permit; and

WHEREAS, as noted above, the developer had permits to perform demolition, but these permits only covered manual demolition, not mechanical; and

WHEREAS, during the course of the hearing process, DOB provided testimony that mechanical demolition is more hazardous than manual demolition and therefore requires a separate permit; and

WHEREAS, accordingly, the demolition permits obtained by the developer did not cover the use of the excavator to take down buildings (though it could be on-site for debris clean-up); and

WHEREAS, at the first hearing on this matter, conducted on March 29, 2006, the developer conceded that DOB issued the above-cited violation for mechanical demolition without a permit; and

WHEREAS, however, the developer claimed that mechanical demolition occurred on only one day (August 23, 2005, the day the violation was issued) for a four hour period, and then the excavator was taken off-site; and

WHEREAS, the developer concluded that no time advantage was gained from the single day of mechanical demolition; and

WHEREAS, at the next hearing, conducted on April 25,

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2006, the developer again stated that mechanical demolition only occurred for between two and four hours on August 23, 2005; that mechanical demolition was not reinitiated; and that the rest of the demolition was done under the issued demolition permits for manual demolition; and

WHEREAS, in response to an inquiry about the mechanical demolition from the Board, the developer made the following statement: “But here, somebody tried to do something, they did it wrong, they got caught, they stopped, and it was done right, and that’s what happened”; and

WHEREAS, based on these representations, made over the course of two hearings, the Board accepted the developer’s position that mechanical demolition only occurred on one day, and then proceeded to an analysis of whether excavation was complete and whether substantial progress had been made on the required foundation; and

WHEREAS, however, the Board was later informed that there was evidence that purportedly showed that mechanical demolition was not limited to one day, as claimed by the developer, but actually occurred over the span of approximately ten business days, from August 22, 2005 until September 10, 2005; and

WHEREAS, the Board scheduled a subsequent hearing on June 13, 2006 for review of this evidence, which was in the form of video footage, taken by certain neighbors of the subject site; and

WHEREAS, the video shown at this hearing by Opposition Counsel was a compilation of various individual videos taken by different neighbors; some of the separate videos included a date stamp, though some did not; and

WHEREAS, at the request of the Board, Opposition Counsel later submitted affidavits from the individuals who shot the video, attesting to the dates on which the video was taken; and

WHEREAS, further, DOB reviewed the video footage, and opined that mechanical demolition was depicted on certain occasions; specifically, DOB stated that mechanical demolition appears in footage taken on August 22, August 23, August 24, August 30, September 6, and September 8, 2005; and

WHEREAS, Opposition Counsel argues that a significant time advantage was gained by the developer through the illegal mechanical demolition, and that the Board should discount a certain percentage of the excavation and foundation work as a result; and

WHEREAS, the Board reviewed the video evidence and agrees that illegal mechanical demolition occurred on more than one day, contrary to the developer’s prior assertions; and

WHEREAS, further, in light of this evidence, the developer concedes that mechanical demolition occurred on days other than August 23, 2005; and

WHEREAS, however, the developer contends: (1) that the Board can not consider the illegal demolition; and (2) that even if the Board were to consider the illegal demolition and subtract the time advantage gained because of it, the deduction would not be so significant that a favorable determination under ZR § 11-331 could not be rendered; and

WHEREAS, in support of the first contention, the developer argues that ZR § 11-331 does not give the Board any express authority to consider the effect, if any, of illegal demolition; and

WHEREAS, specifically, the developer asserts that the plain language of ZR § 11-331 limits the scope of the Board’s inquiry to a technical determination as to the completion of excavation and the degree of progress on foundation construction; and

WHEREAS, the Board questions whether the plain language of this section functions as, or should function as, a shield against Board consideration of any and all illegal pre-excavation development activity when a developer is attempting to vest a construction project; and

WHEREAS, this is especially true where, as here, impermissible development activity may have a direct nexus to the ability to complete excavation and make substantial progress on foundations prior to a zoning change; and

WHEREAS, additionally, if the Board, when hearing applications under ZR § 11-331, was compelled to disregard the impermissible acts of developers merely because they occurred pre-excavation, it would mean that developers would have an incentive to ignore, once a building permit is obtained, other construction-related laws, rules and regulations during site preparation or demolition, safety related or otherwise, if such requirements were time-consuming; the only possible penalty would be DOB enforcement action, a risk developers might be willing to assume given that it would not negatively affect an application under ZR § 11-331; and

WHEREAS, to avoid such gamesmanship, the Board finds that it must have the latitude to evaluate on a case by case basis the effect, if any, that impermissible pre-excavation work at the site had on the ability to meet the technical thresholds set forth at ZR § 11-331; and

WHEREAS, further, the Board disagrees that it is bound solely and completely by the language of ZR § 11-331 when reviewing applications made under this section; and

WHEREAS, the Board’s authority to renew building permits pursuant to ZR § 11-331 is conferred by ZR § 72-01(c), which references ZR § 73-01; and

WHEREAS, ZR § 73-01, in sum and substance, provides that, in harmony with the general purpose and intent of the ZR, the Board may grant renewals under ZR §§ 11-31 to 11-33; this includes ZR § 11-331; and

WHEREAS, the preamble of the ZR sets forth its purpose and intent, and reads, in pertinent part: “This Resolution is adopted in order to promote and protect public health, safety and general welfare.”; and

WHEREAS, thus, the Board can only grant a renewal pursuant to ZR § 11-331 if doing so is in harmony with this purpose and intent; an absolute prohibition on Board consideration of pre-excavation activities that are unlawful and therefore potentially unsafe is contrary to the stated intent of the ZR, since, as discussed above, an incentive to engage in such activities in order to complete excavation and progress on foundation work would be created; and

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WHEREAS, the Board concludes that the above-cited ZR provisions provide it with the basis to review concerns related to pre-construction activity notwithstanding the language of ZR § 11-331; and

WHEREAS, however, the Board notes that it is not opining that all violations of Building Code or other construction-related laws before or during excavation and foundation work would necessarily be relevant in an application made under ZR § 11-331; the Board is aware that major construction projects present ample opportunity for enforcement action by DOB, and that violations are issued in response to occurrences that may be unavoidable or are minor in nature, or that may not have any bearing on how quickly construction will progress; and

WHEREAS, also in support of the first contention, the developer states that the Board has, in other applications, ignored illegal demolition and the resulting potential time advantage; and

WHEREAS, specifically, the developer cites to two prior Board decisions on applications made under ZR § 11-331: (1) 166-05-BZY, concerning 1669/71 West 10th Street, Brooklyn; and (2) 168-05-BZY, concerning 6422 Bay Parkway, Brooklyn; and

WHEREAS, however, these cases are factually dissimilar from the instant matter; and

WHEREAS, in 166-05-BZY, demolition work proceeded without a permit and a violation was issued by DOB; however, the illegal demolition occurred, and was cited by DOB, approximately 14 months prior to the commencement of excavation, thus eliminating the potential that a time advantage was obtained; and

WHEREAS, in 168-05-BZY, the demolition work was in fact permitted; DOB merely issued a violation for failure to remove windows in the building being demolished; and

WHEREAS, additionally, as noted by the developer, the Board was not made aware of the DOB violations in either of these two cases, and did not deliberate upon or reference them in its resolutions; and

WHEREAS, the Board does not express an opinion as to whether the outcome would have changed in either case had it been aware of the violations, but observes because it did not even know of them, neither case can stand for the proposition that the Board has previously ruled that illegal demolition is not a relevant consideration under any circumstances in this type of application; and

WHEREAS, in sum, the Board finds that the developer's first contention is without merit; and

WHEREAS, in support of the second contention, the developer claims that any time advantage gained from the illegal mechanical demolition was minimal and would not affect a determination under ZR § 11-331 that excavation had been completed and substantial progress was made on foundations as of the Rezoning Date; and

WHEREAS, in support of this argument, the developer has submitted testimony from a construction manager, which suggests that, at most, only six days would have been lost from

the construction schedule; and

WHEREAS, Opposition Counsel, citing to a report prepared by its own expert, suggests that anywhere from 9 to 14 working days would have been lost; and

WHEREAS, DOB likewise cited to its expert, and notes that if demolition had been performed by hand, it would have taken so long that excavation could not have commenced until after the SWO was in effect (October 4, 2005); thus, DOB concludes that excavation and foundation work only could have been performed on three business days (from November 11, 2005, the date that the SWO was rescinded, until the Rezoning Date); and

WHEREAS, the developer suggests that all of these time estimates, including that of its construction manager, are essentially guesses, and that it would be arbitrary for this Board to favor one estimate over another without some basis; and

WHEREAS, leaving aside the contentions of the various experts, the Board observes that there is a nexus between the impermissible mechanical demolition and the ability to complete excavation and make substantial progress on foundations; and

WHEREAS, moreover, illegal mechanical demolition occurred even after DOB issued a violation against it; and

WHEREAS, a logical conclusion is that mechanical demolition continued at the site because it assisted the developer in completing the demolition more quickly than by hand demolition alone, and enabled the commencement of excavation and foundation construction at an earlier date; and

WHEREAS, nevertheless, the Board agrees that given the conflicting expert testimony, it is very difficult to fashion a precise and reasonable deduction from the total development time; and

WHEREAS, for this reason, the Board declines to base its determination herein on the supposition that excavation would not have been completed or substantial progress would not have been made by the Rezoning Date but for the illegal mechanical demolition; and

WHEREAS, instead, the Board's denial of the instant application is predicated on serious concerns about the credibility of the developer; and

WHEREAS, as discussed above, the developer stated without hesitation at the first and second hearings that illegal mechanical demolition occurred on only one day - when this was not the case - and inappropriately minimized the importance of the mechanical demolition on this basis; and

WHEREAS, the Board cannot tolerate such a significant pattern of misrepresentation, especially where so much of the Board's deliberation on an application for the right to continue construction under ZR § 11-311 depends on its confidence in the accuracy of the information provided by the developer; and

WHEREAS, it is a particular concern that the misrepresentations concern a fact that has a fundamental bearing on the Board's technical analysis; as noted above, demolition occurred immediately before excavation commenced; thus, any time advantage gained during demolition has a direct relationship to the completion of excavation and the degree of

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foundation construction; and

WHEREAS, forthrightness on the part of the developer is thus crucial to the Board's understanding of how, and to what extent, work progressed prior to the rezoning; unfortunately, here, the developer was less than candid; and

WHEREAS, further, the Board observes that though the developer ultimately conceded that mechanical demolition occurred on days other than August 23, 2005, no explanation of the earlier misrepresentations was subsequently offered; and

WHEREAS, in sum, the Board finds that the credibility of the developer in the instant matter is significantly and irretrievably compromised such that a favorable determination on the application is not warranted; and

WHEREAS, the Board notes that the developer's misrepresentations during the administrative hearing process on this application, even though not made under oath, provide an independent grounds on which the Board may deny the application (See e.g. Holy Spirit Assoc. v. Rosenfeld, 91 A.D.2d 190 (2nd Dep't, 1983); Ostorff v. Sacks, 64 A.D.2d 708 (2nd Dep't, 1978; Pioneer-Evans Co. v. Garvin, 191 A.D.2d 1026 (4th Dep't, 1993)); and

WHEREAS, because the Board finds that the application may be appropriately denied on this basis, it declines to render a determination on the technical findings set forth at ZR § 11-331, or on other issues raised by Opposition Counsel.

Therefore it is Resolved that this application to renew Permit No. 301791318-01-NB pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, July 25, 2006.

364-05-A & 365-05-A

APPLICANT – Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 87-30 and 87-32 167th Street, 252' north of the corner formed by the intersection of Hillside Avenue and 167th Street, Block 9838, Lots 114 and 116, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

For Administration: Janine Gaylard.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

63-06-A

APPLICANT – Sheldon Lobel, P.C.

OWNERS: Kevin and Alix O'Mara

SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for postponed hearing.

81-06-A

APPLICANT – Whitney Schmidt, Esq.

OWNERS: Kevin and Alix O'Mara

SUBJECT – Application May 2, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for postponed hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 1:00 P.M.

REGULAR MEETING

TUESDAY AFTERNOON, JULY 25, 2006

1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, and Commissioner Collins.

ZONING CALENDAR

119-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sam Malamud, owner.

SUBJECT – Application May 16, 2005 – under Z.R. §72-21 to permit the proposed enlargement to an existing one and two story warehouse building, with an accessory office, Use Group 16, located in a C4-3 and R6 zoning district, which does not comply with the zoning requirements for floor area,

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floor area ratio, perimeter wall height, parking and loading berths, is contrary to Z.R. §52-41, §33-122, §33-432, §36-21 and §36-62.

PREMISES AFFECTED – 834 Sterling Place, south side, 80' west of Nostrand Avenue, Block 1247, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

Adopted by the Board of Standards and Appeals, July 25, 2006.

334-05-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for The Whitney Museum of American Art, owner.

SUBJECT – Application November 23, 2005 – Zoning Variance (use & bulk) pursuant to Z.R. §72-21 to facilitate the expansion of an existing museum complex including the construction of a nine (9) story structure located in C5-1(MP) and R8B (LH-1A) zoning districts. The proposed variance would allow modifications of zoning requirements for street wall height, street wall recess, height and setback, mandatory use, and sidewalk tree regulations; contrary to Z.R. §§ 24-591, 99-03, 99-051, 99-052, 99-054, 99-06.

PREMISES AFFECTED – 933-945 Madison Avenue, 31-33 East 74th Street, East side of Madison Avenue between East 74th and East 75th Streets, Block 1389, Lots 21, 22, 23, 24, 25, 50, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Michael Sillerman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 8, 2005, acting on Department of Buildings Application No. 104289146, reads, in pertinent part:

- “1. New development on portion of zoning lot located within C5-1(MP) zoning district does not comply with mandatory street wall and setback requirements along Madison Avenue and East 74th Street, contrary to Zoning Resolution Section 99-051.
2. New development on portion of zoning lot located within C5-1(MP) zoning district does not contain required street wall recesses along Madison Avenue frontage, contrary to Zoning

Resolution Section 99-052(a).

3. Top story of new development on portion of zoning lot located within C5-1(MP) zoning district, which is located more than 170 feet above curb level, has gross area that exceeds 80 percent of the gross area of the story below it, contrary to Zoning Resolution Section 99-054(a).
4. New development on portion of zoning lot located in Midblock Transition Portion of C5-1 (MP) zoning district penetrates applicable limiting plane, contrary to Zoning Resolution Section 99-054(b).
5. New development on portion of zoning lot located in R8B/LH-1A zoning district has a height in excess of 60 feet above curb level, contrary to Zoning Resolution Section 24-591.
6. New development on portion of zoning lot located within C5-1(MP) zoning district does not contain Use Group MP commercial uses in at least 75 percent of the ground level building frontage along Madison Avenue, contrary to Zoning Resolution Section 99-03.
7. New development on portion of zoning lot located within C5-1(MP) zoning district does not provide sidewalk trees at maximum intervals of 25 feet, contrary to Zoning Resolution Section 99-06.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C5-1 zoning district and the Special Madison Avenue Preservation District (the “Special District”) and partially within an R8B(LH-1A) district, the proposed construction of a nine-story addition to the primary building (hereinafter, the “Breuer Building”) of the Whitney Museum of American Art (hereinafter, the “Whitney”), that does not comply with zoning parameters concerning street wall, setback, gross area of floors, limiting plane, height above curb level, commercial frontage, and street trees, contrary to ZR §§ 99-051, 99-052(a), 99-054(a) and (b), 24-591, 99-03, and 99-06; and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in the *City Record*, with a continued hearing on June 20, 2005, and then to decision on July 25, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, numerous other entities and individuals also supported the application; and

WHEREAS, however, some area residents and other individuals opposed the application; and

WHEREAS, additionally, a group of neighbors represented by counsel, Coalition of Concerned Whitney Neighbors (hereinafter, the “Neighbors”), also appeared at

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hearing, and made submissions into the record in opposition to the application; the arguments made in opposition by the Neighbors related to the required findings for a variance, as well as other items, and are addressed below in a separate portion of the resolution; and

WHEREAS, the site has been before the Board previously on two separate occasions: (1) on April 7, 1964, the Board, under Cal. No. 42-64-BZ, granted variances for height and setback, loading berth, and rear yard in connection with the construction of the Breuer Building; and (2) on June 23, 1964, the Board, under Cal. No. 442-64-A, granted an appeal from a decision of the Department of Buildings, which permitted the use of electro-magnetic door holders on several of the Whitney's fire doors; and

WHEREAS, the subject zoning lot on which the Whitney is located consists of Lots 21, 22, 23, 24, 25 and 50 within Block 1389 (hereinafter, the "Whitney site" or the "site"); and

WHEREAS, Block 1839 is bounded by Madison Avenue, Park Avenue, East 74th Street and East 75th Street; the Whitney site is located on the western portion of the block; and

WHEREAS, the site has a total lot area of 25,541 square feet, with 204.33 feet of frontage along Madison Avenue and 125 feet of frontage along both East 74th Street and East 75th Street; and

WHEREAS, the portion of the site that extends 100 feet east of Madison Avenue is located in a C5-1 zoning district and also lies within the Special District; the remainder of the site is located within an R8B(LH-1A) district; and

WHEREAS, the site is also located within the Upper East Side Historic District (the "UESHD"); and

WHEREAS, the site is currently occupied by the following buildings: (1) the Breuer Building, at 945 Madison Avenue, which is a five-story structure, with a height of 97 feet, 8 inches and 60,890 square feet of floor area, and which currently serves as the primary museum space; (2) a 20 ft. wide, 57'-2" high brownstone at 937 Madison Avenue; (3) a 20 ft. wide, 57'-2" high brownstone at 943 Madison Avenue; (3) a 40 ft. wide, 57'-2" high brownstone at 933/35 Madison Avenue; (4) another 40 ft. wide, 57'-2" high brownstone at 939/41 Madison Avenue; and (5) a combined structure at 31-33 East 74th Street, with a height of 69'-4"; and

WHEREAS, all of the afore-mentioned buildings, with the exception of the building at 943 Madison Avenue, are considered by the City's Landmarks Preservation Commission (the "LPC") to be contributing buildings to the UESHD; and

WHEREAS, the brownstone at 943 Madison Avenue, since it is non-contributing, was approved by LPC to be demolished; and

WHEREAS, the proposed addition is a nine-story structure that will rise from the interior of the site, directly to the south of the Breuer Building and behind the brownstones (hereinafter, the "Enlargement"); and

WHEREAS, the applicant states that the Enlargement will have a width of 74 feet, a depth of 70 feet and an overall height of 178 feet; it will set back 30 feet from the Madison

Avenue street line and 17 feet from the East 74th Street line; and

WHEREAS, the Enlargement and the Breuer Building will be connected at the location of pre-existing knock out panels, located on most of the Breuer Building's floors in the center of its south wall; and

WHEREAS, further, the slot between the two structures will contain a series of glass and steel enclosed bridges that provide access between the structures at the locations of the knock-out panels; and

WHEREAS, the Enlargement will contain the following specific uses: a public lobby or "piazza," along with ticketing, coat check and security facilities at the ground level; five full floors of new exhibition space, an auditorium, a library and staff offices; and

WHEREAS, the Breuer Building will also be improved with: (1) a two-story addition on the roof, replacing an existing two-story mechanical plant; and (2) a three-story addition constructed atop a small two-story wing located at the rear of the building; and

WHEREAS, additionally, a one-story enlargement, housing additional office space, will be constructed at the top of the building at 33 East 74th Street; and

WHEREAS, finally, the applicant proposes a mechanized steel crane to be located near the top of the Enlargement, consisting of a mast and a boom arm; the mast will be about 12 inches in diameter and 32 feet tall; the boom arm will consist of a tapered pipe section with a diameter of between 6 and 12 inches and a total length of 85 feet; and

WHEREAS, because the site is within the UESHD, any development on the Whitney Site must be first approved by the LPC; and

WHEREAS, accordingly, the applicant sought approval from the LPC for the Enlargement and the other modifications; LPC reviewed the proposal and issued a Certificate of Appropriateness on January 5, 2006 (the "C of A"); and

WHEREAS, the applicant notes that the position of the Enlargement in the interior of the site will preserve the appearance of the brownstones as separate functional buildings, as required by the LPC; and

WHEREAS, however, the applicant notes that the design and location of the Enlargement as approved by LPC does not comply with the above-cited zoning parameters; and

WHEREAS, thus, the majority of the variances are required to enable the Whitney to construct an enlargement that meets its programmatic needs while complying with the LPC's mandate that any development of the site preserve each of the contributing historic buildings within the site and be appropriate to the subject historic district; one of the waivers (that relating to street trees) relates primarily to existing conditions on the sidewalks surrounding the Whitney site and

WHEREAS, as to these programmatic needs, the applicant represents that the Whitney is a non-profit educational corporation, and its primary mission is to collect, exhibit, preserve, research and interpret the best of 20th and 21st Century American art; and

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WHEREAS, in addition to exhibitions of its permanent collection and new works, the Whitney also has a film and video program, and an education program, directed towards students, scholars, and the general public; and

WHEREAS, however, the applicant states that the Whitney has grown significantly since construction of the Breuer Building, and that more space for its various exhibitions and programs is needed; and

WHEREAS, specifically, the applicant notes the need for additional exhibition space, citing to the Breuer Building's limited 32,852 square feet of gallery space, which is used both for the display of works from the permanent collection and for special exhibitions; and

WHEREAS, the applicant states that some of the space within the Breuer Building that was originally designed as gallery space has been converted to other functions, and that the brownstones are not adaptable to additional exhibition space; and

WHEREAS, the applicant notes that only approximately one percent of the Whitney's permanent collection can be shown at any one time; and

WHEREAS, the applicant also notes that the only space within the Breuer Building that is available to showcase large works of sculpture measures 2,463 square feet, which is insufficiently small; and

WHEREAS, the applicant observes that there is not enough space for all of the Whitney's other programs and support functions, such as its library, its art conservation program, and its offices (currently located primarily in the brownstones); and

WHEREAS, additionally, the applicant observes that the Whitney's East 75th Street loading dock is too shallow to permit off-street loading and unloading of artworks by larger trucks; consequently, much of the loading and unloading at the Whitney is carried on at the main entrance on Madison Avenue, which is inefficient and raises security and liability concerns; and

WHEREAS, finally, the applicant states that the new entrance will alleviate the current cramped conditions found at the entrance and lobby area within the Breuer Building, and improve internal circulation; and

WHEREAS, in its initial submission, the applicant discussed the need for the various waivers as such need arises from the LPC-imposed requirements, the stated programmatic needs, a combination thereof, or actual unique physical conditions; and

WHEREAS, as to ZR § 99-051, the applicant states that within an historic district, this provision would require that any new building along the Madison Avenue frontage of the Whitney site would have to be located on the Madison Avenue street line up to a height of at least 97 feet, 8 inches, which is the street wall height of the Breuer Building; and

WHEREAS, this would mean that the Enlargement would not rise in the center of the site, as proposed, and would tower directly over the brownstones on the street; and

WHEREAS, the applicant states that the Enlargement, in order to comply with the LPC's requirement that all of the contributing buildings be preserved as distinct, functional

structures, will instead be located at the interior of the Whitney site, setting back 30 feet from the Madison Avenue street-line and 17 feet from the East 74th Street street-line; and

WHEREAS, the applicant states that while this positioning of the Enlargement will allow significant portions of the contributing brownstone structures to be retained and restored or rebuilt, and will allow them to be seen as independent structures, the street wall requirement can not be met; and

WHEREAS, the applicant further states that if the Enlargement complied with this street wall requirement, the contributing brownstones would have to be either demolished or reduced to only their facades; and

WHEREAS, the applicant notes that such a scenario would not likely be approved by the LPC; and

WHEREAS, the applicant notes that further non-compliance with the requirements of Section 99-051 will result from the demolition of the non-contributing brownstone at 943 Madison Avenue and the demolition of a non-original two-story addition to the building at 933 Madison Avenue; and

WHEREAS, the applicant notes that the demolition of 943 Madison will better reveal the 10-foot wide slot that will separate the Breuer Building and the Enlargement, but will result in additional non-compliance with the street wall requirement of Section 99-051(a); and

WHEREAS, the applicant claims that this separation is necessary in order to preserve the separate massing and identity of the Breuer Building, ensuring that it remains an independent contributing building to the UESHD, like the contributing brownstones; and

WHEREAS, the removal of the two-story addition will allow for visual access between East 74th Street and the new "piazza" to be located in the ground level of the Enlargement, but will create further non-compliance with the 60-foot street wall requirement of Section 99-051(b); and

WHEREAS, finally, the applicant notes that the enclosed stairway extending from the south façade of the Enlargement will create non-compliance with the requirement set forth in ZR § 99-051(b) that, above a height of 60 feet, a building shall set back at least 15 feet from the street line of a narrow street such as East 74th Street; and

WHEREAS, the applicant claims that the stairway increases the amount of usable space in the Enlargement and provides the requisite secondary egress path to the upper level of the tower; and

WHEREAS, the applicant also notes that the stairway's location is dictated by the LPC-imposed siting of the Enlargement; and

WHEREAS, the applicant concludes that this encroachment on the required setback along East 74th Street is clearly necessary to meet the programmatic and design imperatives of the Enlargement; and

WHEREAS, as to ZR § 99-052(a), the applicant notes that this section normally requires specified recesses in the Madison Avenue street walls of buildings located within the UESHD, in order to create articulation within the mandated

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street wall envelope; and

WHEREAS, specifically, this section requires that, within the base of the Madison Avenue frontage, above a height of 20 feet or the second story, whichever is less, at least 25 percent of the length of the street wall must be recessed from the street line to a depth of at least 5 feet; further, above the base, at least 20 percent of the length of the street wall shall be recessed at least 5 feet.

WHEREAS, the applicant states that the Enlargement does not comply with this provision because the brownstones must be preserved as per LPC, as discussed above, and because such articulation would result in a significant loss of usable space for museum functions; and

WHEREAS, as to ZR § 99-054(a), the applicant states that this section requires that the gross area of any story located more than 170 feet above curb level shall not exceed 80 percent of the gross area of the story directly below it; and

WHEREAS, the applicant states that although the ceiling of the ninth story lies less than 170 feet above curb level, the roof above this story will reach a height of 178 feet above curb level; this ninth story will have the same gross area as the stories below it, contrary to this provision; and

WHEREAS, the applicant notes that the siting of the tower constrains the width and depth of the Enlargement and that the height does not reach the maximum; thus, each floorplate within the tower must be maximized in order to provide for sufficient space to meet the Whitney's programmatic needs; and

WHEREAS, as to ZR § 99-054(b), the applicant notes that this section is applicable to the portion of the site located between 70 feet and 100 feet from the Madison Avenue street line; and

WHEREAS, the applicant states that within this "Midblock Transition Portion," a new development or enlargement shall not penetrate an imaginary plane that begins 70 feet from Madison Avenue at a height of 120 feet above curb level and descends to a height of 80 feet above curb level at a distance of 100 feet from Madison Avenue; and

WHEREAS, the Enlargement does not comply because it sets back 30 feet from the Madison Avenue street line; thus, the rear portion lies within the Midblock Transition Portion and penetrates the applicable limiting plane; and

WHEREAS, again, the applicant explains that the LPC-imposed siting of the building in the interior of the site creates the need for this waiver; and

WHEREAS, the applicant further explains that if the Enlargement complied with both the Madison Avenue setback provision and the Midblock Transition plane provision, the resulting floor plates would be too small to meet the Whitney's programmatic needs; and

WHEREAS, the enlargement of the Breuer building also penetrates the Midblock Transition plane; and

WHEREAS, the applicant explains that this enlargement will provide gallery space; the gallery space must have sufficient floor-to-ceiling heights, which results in the penetration; and

WHEREAS, as to ZR § 24-591, which applies to the

easternmost 25 feet of the Whitney site, located within an R8B/LH-1A zoning district, the applicant states that this provision provides that the maximum height of a building is 60 feet above curb level; and

WHEREAS, the applicant notes that several crucial elements of the project violate this provision: (1) the one-story addition to the currently 69-ft. high building at 33 East 74th Street, necessary for additional office space; (2) the enlargement of the Breuer Building's small two-story element located adjacent to the Whitney site's easterly lot line, which will rise to five-stories in order to match the existing height of the rest of the Breuer Building, thereby providing larger, more flexible floor plates and will maximize the amount of essential exhibition space available within the building; and (3) a portion of the new rooftop addition to the Breuer Building within the R8B/LH-1A portion of the site, which, as discussed above, is needed for gallery space; and

WHEREAS, at hearing, the Board asked if the one-story addition to the building at 33 East 74th Street was absolutely necessary, and further asked if the floor space it creates could be relocated; and

WHEREAS, the applicant made a separate response to this inquiry, and stated that the administrative floor space is needed by the Whitney and it will be ideally situated in close proximity to the other administrative space located in the building; and

WHEREAS, the applicant states that the available space in the remainder of Enlargement is fully utilized and, consequently, the administrative space provided by the addition to 33 East 74th cannot be relocated without displacing other vital programmatic uses; and

WHEREAS, as to ZR § 99-03, the applicant states that this provision requires that, within the Special District, retail uses listed in Use Group MP shall occupy at least 75 percent of the Madison Avenue ground level frontage of a zoning lot; and

WHEREAS, the applicant notes that the site has approximately 204 feet of Madison Avenue frontage, with the Breuer Building occupying 104 feet of this frontage and the brownstones occupying the rest; and

WHEREAS, the applicant states that the Breuer Building, which was constructed before the adoption of the Special District, has never contained any ground level retail uses, and will remain lawfully non-conforming in this respect; and

WHEREAS, however, the brownstones do contain some MP uses, and thus are subject to this provision; and

WHEREAS, the applicant states that it is anticipated that one or more portions of the ground level space in the remaining brownstones will be used for museum purposes; and

WHEREAS, initially, the applicant stated that some degree of retail was proposed, but the amount was not specified; thus, the applicant requested a full waiver of this provision; and

WHEREAS, subsequently, during the hearing process, the Board inquired whether this waiver was necessary and also whether the frontage could be occupied by the museum

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restaurant or book store; and

WHEREAS, however, the applicant notes that a museum bookstore or restaurant are UG 3 museum uses, and would not satisfy the provision; and

WHEREAS, the applicant also notes that as part of the Whitney's plan to refurbish the Breuer Building and restore many of its spaces to their original appearance and function, it is proposed to install any bookstore and restaurant in their originally proposed locations in the Breuer Building; and

WHEREAS, finally, the applicant notes that the spaces located in the ground floor of the brownstones, with demising walls located between each narrow building, would not accommodate the seating capacity, kitchen space and related service functions that the Whitney is planning for its new restaurant; and

WHEREAS, nevertheless, the applicant stated that it has determined that 34 feet of street frontage can be committed to Use Group MP commercial uses; this amount represents approximately 45 percent of the total street frontage required to contain such commercial uses; and

WHEREAS, finally, the applicant notes that City Planning Commission (the "CPC") may modify the mandatory MP use regulations of Section 99-03 if it certifies that the treatment of the subject building facades "preserves and enhances street life on Madison Avenue compatible with the character of the surrounding area."; the applicant notes that the facades of the brownstones will be carefully restored; and

WHEREAS, the Board observes that it has often allowed applicants to apply for relief from certain provisions that are otherwise waivable at CPC in the context of an application for waivers that can only be granted through the variance process, in the interest of administrative convenience, so long as the specific waiver is needed based on program or actual uniqueness; and

WHEREAS, as to ZR § 99-06, the applicant states that this provision requires that trees shall be installed on the sidewalks for the entire length of the street frontage of the site at intervals of not more than 25 feet; and

WHEREAS, the applicant notes that, in order to comply, eight trees would have to be installed on the Madison Avenue frontage and four trees would be required along both East 74th Street and East 75th Street, for a total of 16 street trees; and

WHEREAS, the applicant states that a minimum of ten trees are proposed; and

WHEREAS, the applicant states that the following street features create a practical difficulty with full compliance: (1) a 14 foot long transformer vault covered by a grating and a 17 foot long curb cut providing access to the Whitney's loading dock along 75th Street; (2) a bus stop that extends for approximately 40 feet along Madison Avenue; (3) a 17 foot wide canopy extending over the sidewalk at the Madison Avenue entrance to the Breuer Building and a second canopy that may cover the sidewalk at the new entrance to the Whitney; and (4) smaller obstructions, such as sign and light poles, parking meters, fire hydrants, mail boxes and public telephones; and

WHEREAS, the applicant notes that the City's Department of Parks and Recreation ("the Parks Department") imposes tree planting guidelines related to minimum interval and distance from signs, etc., that eliminate the possibility of full compliance; and

WHEREAS, at hearing, the Board asked the applicant if larger caliper trees could be provided, to compensate for the decreased amount; and

WHEREAS, the applicant states that it will consult with the Parks Department and endeavor to provide more than ten trees or larger caliper trees, but that it is unable to guarantee that this will happen; and

WHEREAS, in analyzing the Whitney's waiver requests, the Board notes at the outset that the museum, as a non-profit educational institution, may use its programmatic needs as a partial basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see e.g. Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board notes that the Whitney is a chartered educational institution, and provides a significant educational program; and

WHEREAS, at the request of the Board, the applicant provided more detailed information about this program; and

WHEREAS, specifically, the applicant stated that the Whitney offers more than 35 distinct education programs, which serve approximately 100,000 people annually, including school children, senior citizens, families and university students, and that the Whitney's educational programs are staffed by 14 full time employees, 44 docents and 8 to 12 freelance instructors; the applicant provided a list of other educational institutions with which the Whitney has a relationship; and

WHEREAS, the applicant notes that the Whitney currently has no dedicated education space for its education program, and that the Enlargement will provide this much needed space; and

WHEREAS, accordingly, the Board finds it appropriate to give the Whitney's programmatic needs the deference requested by the applicant; and

WHEREAS, the Board observes this deference has been accorded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its initial submission; and

WHEREAS, here, the variances will facilitate construction of a building that will meet the specific needs of the Whitney; and

WHEREAS, specifically, as set forth above, the applicant represents that the Enlargement will provide the Whitney with approximately 20,000 square feet of additional exhibition space, which will enable it to display more than the approximately one percent of its permanent collection that it is now capable of showing; and

WHEREAS, the applicant further represents that the

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Enlargement will also provide the Whitney with additional space for its special programs and support functions; and

WHEREAS, the applicant notes that the Enlargement will also result in a larger and more efficient entrance lobby and ticketing area, which will be much easier for the physically challenged to negotiate, and a larger off-street loading area, which will enable the Museum to load and unload all of its art work in a secure, climate-controlled off-street area.

WHEREAS, however, the applicant concedes that a building form that complied with the above cited bulk provisions would also meet the programmatic needs of the applicant; and

WHEREAS, thus, the Whitney's programmatic needs are not the sole basis for the requested waivers; and

WHEREAS, rather, as established above, the need for the waivers is substantially the product of the LPC-imposed requirement that the brownstones and the Breuer Building be maintained as separate contributing buildings within the UESH; and

WHEREAS, the Board observe that this requirement serves as the primary impetus for the majority of the waivers; while the degree of the some of the waivers is increased due to programmatic needs, they relate primarily to the LPC-approved siting of the Enlargement; and

WHEREAS, the exceptions are the retail frontage requirement, and the street tree requirement; and

WHEREAS, the Board observes that the compliance with the retail frontage requirement would impose a hardship on the Whitney because such compliance is counter to the museum's programmatic needs, as explained above; and

WHEREAS, the Board further observes that the need for a waiver of the street tree requirement is primarily a function of existing street conditions, though it is partially related to the existing and proposed canopies of the museum; and

WHEREAS, in sum, the Board concludes that the need for the waivers has been fully explained and documented by the applicant, based upon the LPC requirements, the nexus between said requirements and the programmatic needs, or actual physical conditions (including the configuration of the existing buildings on the site); and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that unnecessary hardship and practical difficulty exist in developing the site in compliance with the applicable zoning regulations, due to the combination of the LPC-imposed requirements as to the location of the Enlargement in relation to the protection of the brownstones and the Breuer Building, as well as the programmatic needs of the Whitney; and

WHEREAS, since the Whitney is a non-profit institution and the variances are needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variances, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate

use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the size of the buildings in the immediate vicinity of the site are varied, ranging from one and two story carriage houses to high-rise residential buildings; and

WHEREAS, the building directly to the west of the Breuer Building, at 14 East 75th Street, is an 11-story structure with a height of 166 feet, while the building directly to the north, at 35 East 75th Street, has 16 stories and a height of 192 feet; and

WHEREAS, the building located southwest of the site, at Madison Avenue and East 74th Street is a 15-story, 192-foot high apartment building, while the 40-story, 394-foot high Carlyle Hotel lies one block to the north, at Madison Avenue and East 76th Street; and

WHEREAS, further, the easterly end of the block on which the zoning lot is located contains two 14-story residential buildings; and

WHEREAS, the applicant states that the Enlargement will have nine stories and rise to a complying overall height of 178 feet, and will be comparable in height with a number of surrounding buildings; and

WHEREAS, in support of this statement, the applicant cites to a drawing entitled "Existing Neighborhood Building Heights," which shows that there are 53 buildings with a height of 140 feet or more, and twelve buildings with a height of at least 178 feet, in the area surrounded by Fifth Avenue, Lexington Avenue, East 72nd Street and East 79th Street; and

WHEREAS, the applicant also cites to other submitted drawings that show that, along both sides of Madison Avenue, East 74th Street and East 75th Street in the vicinity of the Whitney, numerous buildings are comparable in height to the Enlargement; and

WHEREAS, the applicant further states that the location of the Enlargement 30 feet from the street line behind the brownstones is also consistent with the built context of the surrounding neighborhood; and

WHEREAS, the applicant notes that there are 15 buildings of 13 stories or higher located in the mid-block, immediately east and west of Madison Avenue within the UESH; and

WHEREAS, the applicant specifically notes that there is a 15-story building at 23 East 74th Street and a 16-story building at 20 East 76th Street which are also situated in the mid-block; and

WHEREAS, the applicant notes that LPC issued the C of A in recognition of the fact that the Enlargement would be compatible with the built conditions in the UESH, in terms of height and in terms of its relation to the smaller brownstones; and

WHEREAS, the Board agrees that the C of A, while not dispositive, is highly relevant evidence in support of the conclusion that the proposed development on the Whitney site comports with the essential character of the community; and

WHEREAS, finally, the applicant notes that the Environmental Assessment Statement prepared for this

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application demonstrates that the Enlargement will not produce excessive vehicular or pedestrian traffic in the surrounding area or any other negative community impacts; and

WHEREAS, at hearing, the Board asked about potential impacts related to: (1) the proposed loading dock; (2) the proposed crane; and (3) solid waste disposal; and

WHEREAS, as to the proposed loading dock on East 75th Street, the applicant explained that it will be enlarged to a 27 ft. by 87 ft. loading dock and will allow the loading and unloading of trucks that service the Whitney and other activities that are potentially disruptive to the neighborhood to be carried on indoors; and

WHEREAS, the applicant provided a memorandum regarding the dock, which explains that upon its completion, trucks of all sizes, including large tractor trailers, will use it, eliminating the possibility that large trucks will interfere with traffic on East 75th Street while loading and unloading; however, the largest tractor trailers may briefly interrupt traffic on East 75th Street while maneuvering into the loading dock; and

WHEREAS, the applicant notes that the Whitney will be required to obtain special permits from the City's Department of Transportation to temporarily remove three or four parking spaces along East 75th Street in order to provide the trucks with sufficient space to maneuver into and out of the loading dock; and

WHEREAS, however, these very large trucks will only arrive at the Whitney several days a year and, accordingly, any resulting neighborhood disruptions will be minimized; and

WHEREAS, as to the crane, the applicant states that it will be used on infrequent occasions to bring into the Museum works of art that are too large to be brought through the loading dock; and

WHEREAS, when not in use, it will be held in the vertical position, with the top of boom arm reaching a height of approximately 210 feet; and

WHEREAS, the applicant notes that the installation and operation of the crane will comply with applicable provisions of the Building Code; and

WHEREAS, as to solid waste and sanitation services, the applicant explains that, although the Enlargement will generate some additional solid waste, it can be handled by the existing private sanitation service and will not require additional truck trips; and

WHEREAS, based upon the above, the Board finds that the subject variances, if granted will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

WHEREAS, as to the self-created hardship finding, the applicant reiterates that the design and siting of the Enlargement as imposed by the LPC is fundamentally at odds with the building envelope mandated under the applicable zoning regulations; and

WHEREAS, the applicant also notes that the Whitney signaled its future expansion plans by incorporating knock-

out panels in the south wall of the Breuer Building and commencing acquisition of the brownstones prior to the implementation of the above regulations and prior to the designation of the UESHD; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by the Whitney or a predecessor in title; and

WHEREAS, as to minimum variance, the Board notes that the applicant investigated two lesser variance scenarios, one in the initial submission and one at the request of the Board during the hearing process; and

WHEREAS, the initial lesser variance scenario investigated an enlargement that would require fewer zoning waivers than actually requested; and

WHEREAS, specifically, the applicant submitted plans showing an enlargement that sets back from the Madison Avenue and East 74th Street street-lines in the same manner as the Enlargement, thus requiring a variance of Zoning Resolution Section 99-051, but complies with all other bulk regulations, including the Midblock Transition restrictions of Section 99-054(b); and

WHEREAS, the applicant notes that the resulting structure would be a tall, extremely narrow structure, containing 12 stories and reaching the maximum height of 210 feet allowed under the applicable zoning regulations; and

WHEREAS, the applicant further notes that stories six through nine would have a depth of only 40 feet and each of the uppermost three stories, located more than 170 feet above curb level, would have to be progressively narrower than 40 feet in order to comply with ZR Section 99-054(a); and

WHEREAS, the applicant concludes that the resulting floor plates would not provide the Whitney with the relatively large unobstructed gallery spaces that are needed to properly display and view art work, especially the sort of larger works that are such an important part of the permanent collection; and

WHEREAS, the applicant also concludes that the amount of vertical travel between these 12 above grade levels that would be required of both the public visiting the galleries and Whitney staff would be cumbersome, inefficient and undesirable; and

WHEREAS, finally, the applicant notes that although this lesser variance scenario would produce a significantly taller building, it would contain approximately 12,400 less square feet than the Enlargement, which was designed to satisfy the Whitney's minimum programmatic requirements; and

WHEREAS, the Board agrees that such a scenario is not viable, for the cited reasons; however, at hearing, the Board asked the applicant to review a different lesser variance scenario, namely, one that, like the prior scenario, would only require a bulk variance of the mandatory street wall requirements and gross story area restrictions, but which would set back from Madison Avenue 20 feet, rather than 30 feet; and

WHEREAS, the applicant submitted drawings which illustrate this scenario, and concludes that it too would result

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in a tall, narrow building that would not meet the Whitney's programmatic needs, in that it would possess smaller floor plates and result in less overall floor space; and

WHEREAS, further, the applicant contends that setting the enlargement back only 20 feet from Madison Avenue would leave the brownstones with the same truncated depth of only 20 feet, which would significantly diminish the reading of these buildings as real, functional structures, separate from the enlargement behind them, as required by LPC; and

WHEREAS, the Board agrees that this second lesser variance is not viable; and

WHEREAS, the applicant further notes that the Enlargement complies with overall floor area and height restrictions, that it will cure a rear yard non-compliance and will reduce a lot coverage non-compliance, both as to the R8B portion of the site, and

WHEREAS, accordingly, the Board finds that the requested waivers represent the minimum variance necessary to allow the Whitney to meet its programmatic needs and the LPC-imposed building form and siting requirements; and

WHEREAS, as summarized in its submission dated July 5, 2006, the Neighbors make the following arguments in opposition to the instant application: 'A' Finding – (1) the applicant's statements as to the Whitney's programmatic needs, particularly in terms of the office use, are not sufficiently specific as to how spaces are currently used and how the new spaces will be used; (2) the 13,000 sq. ft. of retail space has no nexus to the Whitney's program other than revenue production; (3) deference under Cornell is not required for the Whitney, in alignment with the Board's prior decision relating to a homeless shelter under BSA Cal. No. 220-03-BZ; 'B' Finding – (1) a feasibility study should be prepared notwithstanding the Whitney's non-profit status since approximately 20,000 sq. ft. of the Enlargement is devoted to profit-generating uses such as retail and a bookstore and restaurant; (2) the Board should require a feasibility study based upon its prior determination under BSA Cal. No. 194-03-BZ, where the Board required a feasibility study for a proposed catering facility in a religious school; 'C' Finding – (1) the Enlargement is proposed to be a metal-clad tower that is double the height of the Breuer Building; (2) the height and the massing of the tower is inconsistent with nearby buildings and the character of the neighborhood; (3) the LPC C of A is not a replacement for Board review of the potential impact the variances might have on the character of the neighborhood or adjacent uses; (4) the incursion of the tower into the midblock has not been addressed by the applicant; (5) the tower will have a negative impact on the light and air of immediate neighbors' yards; (6) the Enlargement will have a negative effect on pedestrian and vehicular street volumes; 'D' Finding - (1) the Whitney's programmatic space needs are driven, in part, by the retail space; 'E' Finding – (1) the fact that the Enlargement does not utilize the maximum FAR available on the site does not negate the potential impacts of the other variances or excuse the Board from ensuring that minimum variance options have been adequately explored; (2) there is no assurance that LPC

would approve a building with more floor area, and a smaller building has not been explored; (3) the proposed lobby within the Enlargement takes up a volume of space in which the Breuer Buildings was able to accommodate both a lobby and galley; (4) the retail space increases the building height by 2.5 stories; (5) the amount of office space is still undefined, which means the Board can not determine if it is a true programmatic need as opposed to a luxury; (5) no pressing need has been shown for the proposed restaurant and gift shop; and (6) removing the outside retail leases and lowering the lobby height would reduce the height by 67 ft., thereby reducing the degree of variance; and

WHEREAS, as to the specificity required to establish programmatic need, the Board finds that the applicant's submissions, which include statements, plans, and other pieces of evidence, provide the required specificity; and

WHEREAS, the Board notes that the Whitney's director made a detailed submission outlining the space constraints of the Breuer Building, and that other witnesses testified at hearing as to the need to enlarge the Whitney; and

WHEREAS, in addition, the applicant explains the need for the additional spaces in a submission dated June 13, 2006, noting that the proposed gallery space will allow for more of the Whitney's art collection to be exhibited on a more frequent basis in spaces that will allow for superior viewing by the museum's visitors; and

WHEREAS, in this same submission, the applicant also explains that the Enlargement will create needed space for the Whitney's educational program; and

WHEREAS, as to the office space issue, the applicant notes that the Whitney's staff is currently in cramped quarters within the brownstones and that the Enlargement will increase the amount of office space from 20,659 sq. ft. to 29,804 sq. ft.; and

WHEREAS, the applicant claims that based upon the amount of Whitney employees that will occupy offices (171), the amount of office space per employee is 174 sq. ft., which is below the general standard of 250 sq. ft. established by CEQR; and

WHEREAS, as to the retail space, the applicant states that the retail frontage is required by ZR § 99-03, whether the proposed development is pursued by a non-profit or not; and

WHEREAS, the Neighbors appear to be arguing that the applicant should be penalized for attempting to partially comply with this zoning provision; and

WHEREAS, the Board also notes that a waiver of this section is available through the CPC, but in the interest of administrative convenience, the waiver request was made a part of this application; and

WHEREAS, the applicant further notes that the retail component only represents about six percent of the space within the Whitney museum complex as proposed to be enlarged, and that for the retail space to be attractive to potential lessees, below grade accessory storage must be provided; and

WHEREAS, as to BSA Cal. No. 220-03-BZ, which was, in part, an application for construction of a new shelter for homeless families, the Board notes that nowhere in the

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resolution denying the application does it suggest, as the Neighbors argue, that the Board viewed schools and religious institutions as separate and distinct entities from other non-profits in terms of the deference that should be accorded under Cornell; and

WHEREAS, rather, as the applicant observed, the Board was explaining why the shelter entity's evidence of programmatic need was deemed to be lacking in light of the absence of any contract or other obligation to provide new shelter beds; and

WHEREAS, however, as noted above, the Board finds that the applicant has sufficiently shown why the requested waivers are justified due to the constraints placed on development by the LPC-imposed requirements, the Whitney's programmatic needs, actual unique site conditions such as the existing built conditions on the site or surrounding the site, or a combination of these factors; and

WHEREAS, as to the need for a feasibility study due to the proposed retail space and alleged Board precedent for such a study, the Board again finds that the Neighbors have misconstrued a prior Board decision; and

WHEREAS, the Neighbors cite to the Board's decision in BSA Cal. No. 194-03-BZ, in which the Board asked the applicant for a commercial catering use variance, a religious school, to submit a feasibility study in support of its application; and

WHEREAS, the Board observed in that case that there was no programmatic needs component to the application; the entirety of it related to a large-scale Use Group 9 commercial catering operation that was deemed by the Board to be an entirely separate operation from the religious school; and

WHEREAS, as noted by the applicant, the requested waiver here is not one asking for permission to have the required retail space, but rather one that seeks a reduction in the amount of retail frontage that is normally required; and

WHEREAS, unlike the catering case, where a use variance was required for the catering hall, the retail use here is as of right; and

WHEREAS, likewise, the other cases to which the Neighbor's cite – 179-03-BZ and 315-02-BZ – are also factually dissimilar, in that the requested waivers related to significant floor area increases to accommodate residential uses; and

WHEREAS, again, no increase in the amount of retail floor area is being requested by the applicant; and

WHEREAS, as to the character finding, the Board notes that it heard testimony from many neighbors concerned about the overall height and the overall floor area of the Enlargement; and

WHEREAS, however, the proposed floor area over the entire Whitney Site is within the as of right parameters as set forth in the ZR; and

WHEREAS, further, the overall height is well within the permissible height limit of 210 feet; and

WHEREAS, moreover, the Board does not find that the fact that the proposed height is double the height of the Breuer Building to be in of itself particularly compelling; and

WHEREAS, the Board, as noted above, finds that that

the applicant has sufficiently established the proposed height and mid-block location of the Enlargement is comparable to other buildings in the area; and

WHEREAS, furthermore, there is nothing in the record to suggest that the Board has abdicated its responsibility to review the character finding because LPC has approved the Enlargement; the Board recognizes that the C of A speaks to the Enlargement's compatibility with the historic character of the UESH, and, while the Board deems this approval quite relevant to the instant proceedings, it has nevertheless required the applicant to submit additional evidence addressing the potential impacts on the character of the community and the adjacent uses that the various waivers might create if granted; and

WHEREAS, the Board has reviewed the applicant's submissions and observes that the mid-block location of the tower has been adequately addressed by the applicant, rather than being ignored as the Neighbors suggest; and

WHEREAS, furthermore, the applicant argues, and the Board agrees, that any light and air impacts are no more significant than if the proposed Enlargement complied with the above-referenced provisions; and

WHEREAS, the Board notes that the Neighbors have not submitted any concrete evidence of such impacts, which would allow the Board to engage in meaningful review of its contentions; and

WHEREAS, the Board also observes that the applicant engaged an environmental consultant to investigate traffic impacts and that said consultant, in a report, concluded that while there will be modest increase in bus trips due to the Enlargement, there will not be a significant impact on traffic in the vicinity of the Whitney; and

WHEREAS, as to the self-created hardship finding, the Board rejects the contention that the proposed retail space, and the resulting space needs, is a self-created hardship; and

WHEREAS, as noted above, compliance with the retail frontage requirement is not an option; in fact, it is required within the Special District; and

WHEREAS, as to the minimum variance finding, the Board agrees that the fact that the Enlargement does not utilize the maximum FAR available on the site does not negate the potential impacts of the other variances or excuse the Board from ensuring that minimum variance options have been adequately explored; and

WHEREAS, however, the applicant has undertaken significant analysis of two lesser variance options, and has credibly concluded that they are not viable; and

WHEREAS, the Board notes that the performance of such analysis exceeds what is normally submitted in comparable programmatic needs applications; and

WHEREAS, further, as discussed above, the Board has adequately explored the potential impacts of the variances and the development overall; and

WHEREAS, as to the other contentions regarding minimum variance, the Board has reviewed the applicant's response to the Neighbors, dated May 30, 2006, in which each of the contentions are refuted; and

WHEREAS, the response explains that the lobby, the

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amount of office space, and the floor-to-ceiling heights of the gallery spaces are all driven by the need to meet the Whitney's minimum programmatic needs; and

WHEREAS, further, the applicant explains that the office space needs are in fact established, that below grade spaces are being fully utilized, and that the proposed floor plate sizes are the minimum necessary to support the Whitney's mission; and

WHEREAS, in sum, the Board has reviewed the arguments made by the Neighbors and others in opposition to the subject application, as well as the applicant's responses, as stated at hearing and as set forth in its submissions, and finds that each and every one of the opposition contentions are without merit and have been acceptably refuted by the applicant; and

WHEREAS, accordingly, based upon its review of the record and its site visit, the Board finds that the applicant has provided sufficient evidence in support of each of the findings required for the requested variances; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA033M, dated March 8, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a November, 2005 Environmental Assessment Statement and (2) a July, 2005 Phase I Environmental Site Assessment; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a Restrictive Declaration was executed on March 20, 2006 and recorded on April 5, 2006 for the subject property to address hazardous materials concerns; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617,

the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C5-1 zoning district and the Special Madison Avenue Preservation District and partially within an R8B(LH-1A) district, the proposed construction of a nine-story addition to the primary building of the Whitney Museum of American Art, that does not comply with zoning parameters concerning street wall, setback, gross area of floors, limiting plane, height above curb level, commercial frontage, and street trees, contrary to ZR §§ 99-051, 99-052(a), 99-054(a) and (b), 24-591, 99-03, and 99-06, on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 18, 2006"-twenty-two (22) sheets and "Received July 21, 2006" – four (4) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2006.

358-05-BZ

APPLICANT – Sheldon Lobel, P.C., for WR Group 434 Port Richmond Avenue, LLC, owner.

SUBJECT – Application December 15, 2005 – Zoning variance pursuant to Section 72-21 to allow UG 6 commercial use (open accessory parking for retail) in an R3A zoned portion of the zoning lot (split between C8-1 and R3A zoning districts).

PREMISES AFFECTED – 438 Port Richmond Avenue, northwest corner of Port Richmond Avenue and Burden Avenue, Block 1101, Lot 62, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated November 9, 2005, acting on Department of Buildings Application No. 500799987, reads, in pertinent part:

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“Term of variance under BSA calendar 307-53-BZ has expired and is referred to the Board of Standards and Appeals for Consideration. [ZR 11-411]”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R3A zoning district and partially within an C8-1 zoning district which has previously been before the Board, a proposed retail use (UG 6) with accessory parking, which is contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in the *City Record*, and then to decision on July 25, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 1, Staten Island, recommends approval of the application; and

WHEREAS, the subject premises is located at the southwest corner of Port Richmond Avenue and Burden Avenue; and

WHEREAS, as noted above, the premises is partially within a C8-1 zoning district and partially within an R3A zoning district; the R3A zoning district begins approximately 100 ft. from the Port Richmond Avenue street line and fronts Burden Avenue; and

WHEREAS, the total lot area over the entire site is 17,759 sq. ft., with approximately 12,589.4 sq. ft. within the C8-1 district; and

WHEREAS, the site is currently improved upon with a one-story retail building with two accessory parking lots, one of which is in the C8-1 and fronts the building and the other is within the R3A district at the rear of the building; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since December 17, 1946, under BSA Calendar No. 267-46-BZ, when the Board permitted in a business and residential district, the alteration of an existing garage and motor vehicle repair shop which occupied more than the permitted area; and

WHEREAS, subsequently, on several occasions the grant was extended and amended, including under BSA Calendar No. 307-53-BZ, when additional alterations were proposed for the automobile dealership that occupied the site; and

WHEREAS, most recently, on October 31, 1978, the Board granted an application to amend the variance to extend the term for the existing automobile showroom and motor vehicle repair shop with accessory uses; and

WHEREAS, the most recent grant expired on November 19, 1988; and

WHEREAS, at some point after 1978, the motor vehicle showroom and automotive repair use (UG 16) was discontinued; and

WHEREAS, the applicant proposes to rehabilitate the existing 7,660 sq. ft. commercial building at the site to allow for a 7,964.95 sq. ft. UG 6 retail use building and to re-establish two parking lots, one at the front and one at the rear of the lot, consistent with the existing layout; and

WHEREAS, the proposed retail use and some of the

accessory parking are located within the C8-1 portion of the site and will be constructed as of right, but the remainder of the accessory parking is located in the adjacent R3A zoning district, thus necessitating the requested use waiver; and

WHEREAS, specifically, the majority of the retail building and 17 of the 29 total parking spaces will be maintained within the C8-1 district; and

WHEREAS, a sliver of the rear of the retail building and 12 accessory parking spaces will be within the R3A district at the rear; and

WHEREAS, the existing curb cuts – two on Burden Avenue (one within the C8-1 district and one within the R3A district) and one on Richmond Avenue (within the C8-1 district) – will remain; and

WHEREAS, the commercial FAR within the C8-1 district is approximately .448; the maximum commercial FAR in the zoning district is 1.0; thus, the proposal applies with applicable FAR; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is divided by a district boundary line, separating the lot between C8-1 and R3A zoning districts, where permitted uses in each district are prohibited in the other district; (2) the site is irregularly shaped, and (3) the historic use of the site; and

WHEREAS, as to the zoning district boundary, the applicant represents that although there are other lots within the area that share this condition, none have as large of a percentage of their lot area within the residential district; and

WHEREAS, the applicant submitted a 400 ft. radius map that supports this assertion; and

WHEREAS, the Board agrees that no other split lots within the 400 ft. radius have as large of a portion within the residential district as the subject site; and

WHEREAS, additionally, the applicant represents that development on the R3A portion of the site is limited by its trapezoidal shape, which varies 23.5 feet in width from the front to the rear of the lot; and

WHEREAS, the Board notes that the shape of the development site – an “L” shape - is unusual, and further compromises conforming development over the entire site; and

WHEREAS, finally, the Board notes that there is a 60-year history of commercial use at the site, and that the prior uses, including a motor vehicle showroom and automotive repair shop, were more offensive than the proposed retail use; and

WHEREAS, additionally, the Board notes that retail use is as of right in the C8-1 zoning district; and

WHEREAS, accordingly, the Board finds that certain of the aforementioned unique physical conditions – namely, the existence of the district boundary, the lot’s unusual shape, and the history of UG 16 uses at the site - when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study

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that analyzed an as of right residential and retail scenario, with the residentially zoned portion of the lot being developed with a two-family dwelling; and

WHEREAS, the applicant concluded that the as of right scenario would generate a negative return, due to costs related to the above-stated unique physical conditions; and

WHEREAS, based upon its review of the applicant's feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed development will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, first, the applicant notes that there is a long history of commercial use at the site; and

WHEREAS, the applicant adds that the majority of the lot's area is within the C8-1 zoning district, a heavy commercial zone, and a C2-2 overlay lies directly across Burden Avenue from the site; and

WHEREAS, the Board notes that there is an established commercial corridor along Port Richmond Avenue, but that the site abuts a residential district; and

WHEREAS, the Board suggested that the applicant install a buffer along the R3A portion in order to ease the transition between zoning districts; and

WHEREAS, at hearing, the applicant agreed to install a six ft. opaque fence along the portion of the site that abuts the residential use; and

WHEREAS, the Board notes that the proposed bulk parameters, including a perimeter wall height and total height of 24'-3"; an FAR of .448; and a floor area of 7,964.95 sq. ft., comply with applicable zoning district regulations; and

WHEREAS, as to the parking, the Board asked the applicant how many parking spaces could be accommodated in both accessory lots; and

WHEREAS, the applicant responded that based on the standard of 300 sq. ft. per space, 17 spaces could be accommodated within the front parking lot and 12 spaces within the rear

WHEREAS, the applicant notes that 25 parking spaces are required at the site, based on the zoning parameters for the retail building; and

WHEREAS, the board agrees that these representations establish that the required amount of parking can be accommodated at the site; and

WHEREAS, the Board further notes that the parking encroachment into the R3A district is restricted to the same degree of encroachment that currently exists on the site; and

WHEREAS, the Board also asked the applicant to submit a signage plan, indicating the size and location of all signs at the site; and

WHEREAS, the applicant submitted a signage plan

illustrating complying signage, all of which is located within the C8-2 portion of the site; and

WHEREAS, finally, the Board notes that while the site will be occupied by a UG 6 retail and parking lot, this use will replace a more intensive UG 16 commercial use that historically occupied the site; and

WHEREAS, moreover, the retail use will occupy the same footprint as the existing building; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the trapezoidal shape of the block and the placement of the district boundary line; and

WHEREAS, the applicant represents that strict compliance with all zoning regulations would force the owner to effectively abandon a portion of the lot and therefore compromise the overall return; and

WHEREAS, the applicant concluded that the current proposal would realize a minimal return sufficient to overcome the site's inherent hardship; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA042R, dated May 16, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the

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New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R3A zoning district and partially within an C8-1 zoning district which has previously been before the Board, a proposed retail use (UG 6) with accessory parking, which is contrary to ZR § 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 25, 2006"- three (3) sheets; and *on further condition*:

THAT all fencing as shown on the BSA-approved plans shall be opaque;

THAT all lighting on the site shall be directed downwards and away from any adjacent residential use;

THAT a maximum of 29 and a minimum of 25 parking spaces shall be provided in the accessory parking lot;

THAT the two parking lots shall only be used for accessory business purposes; no commercial parking is permitted;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2006.

26-06-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Empire Staten Island Development, LLC, owner; L. A. Fitness International, LLC, lessee.

SUBJECT – Application February 16, 2006 – Special Permit application pursuant to Z.R. §§ 73-03 and 73-36 to operate a 51,609 square foot Physical Culture Establishment (LA Fitness) in an existing vacant one-story building. The site is located in within an existing shopping center in a M1-1 zoning district.

PREMISES AFFECTED – 145 East Service Road/West Shore Expressway, Block 2630, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Ellen Hay.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 7, 2006, acting on Department of Buildings Application No. 500820515, reads, in pertinent part:

“As per Section 73-36, physical culture or health establishments may be permitted by the Board of Standards and Appeals.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M1-1 zoning district, the establishment of a physical culture establishment (“PCE”) to be located within an existing one-story building, which is part of a shopping center, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, and then to decision on July 25, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, certain neighbors expressed concern about potential parking impacts; these concerns are discussed below; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the conditions set forth below; and

WHEREAS, the shopping center site is located on a triangular block bound by East Service Road/West Shore Expressway to the west, Alberta Avenue to the north, and Wild Avenue to the east; and

WHEREAS, the shopping center occupies Block 2638, Lots 50, 60, and 63 with two commercial buildings and a total of 542 unattended parking spaces which are shared by the lots; and

WHEREAS, Lot 50 is to be occupied by the proposed PCE building and accessory parking; Lot 60 is occupied by other commercial uses including a Department of Motor Vehicles, a bowling alley, restaurants, and offices; Lot 63 is a vacant parking lot, which is cordoned off and inaccessible, at the rear of the commercial building on Lot 60; and

WHEREAS, Lot 63 is not part of the application and will not be used by the PCE; and

WHEREAS, the shopping center site has a lot area of 248,092 sq. ft.; and

WHEREAS, the PCE will occupy 51,609 sq. ft. of the one-story building, formerly occupied by a movie theater which is located at the Wild Avenue side of the shopping center near the corner with East Service Road; and

WHEREAS, an existing mezzanine within the existing building will be removed; and

WHEREAS, the applicant represents that the PCE will offer classes in physical improvement, strength training,

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weight training, group fitness programs, personal training, cardio-vascular programs, and basketball and racquet ball courts for members; and

WHEREAS, the applicant proposes to operate the facility as an L.A. Fitness gym; and

WHEREAS, the proposed hours of operation for the PCE are as follows: Monday through Friday, 5:00 a.m. to 12:00 a.m., and Saturday and Sunday, 6:00 a.m. to 8:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant to respond to the concerns of the neighbors and describe the proposed accessory parking needs generated by the PCE; and

WHEREAS, the applicant represents that there is a reciprocal easement agreement for the shared parking; this agreement does not include Lot 63; and

WHEREAS, additionally, the applicant represents that there is a capacity for 233 parking spaces within a discrete rectangular portion of Lot 50 abutting the proposed PCE; and

WHEREAS, the applicant's parking analysis determined that 142 parking spaces would be sufficient to accommodate the PCE's parking needs during its peak hour of 6:00 p.m. to 7:00 p.m., weekdays; and

WHEREAS, the applicant notes that most shopping center visitors park nearest to the business they are patronizing; and

WHEREAS, therefore, the applicant asserts that visitors to the PCE will park in the lot nearest to the PCE on Lot 50 and will not impact the parking availability for other uses within the shopping center; and

WHEREAS, the Board agrees that there is ample parking for all shopping center uses and that the proposed use would likely have less impact on parking and vehicular traffic than the prior movie theater use; and

WHEREAS, at the request of the Board, the applicant submitted an analysis indicating that the proposed accessory business signage is compliant with district regulations; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA055R, dated February 13, 2006 and

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within an M1-1 zoning district, the establishment of a physical culture establishment located within an existing one-story building within a shopping center, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 24, 2006"-(3) sheets; and *on further condition:*

THAT the term of this grant shall be for ten years from the date of the grant, expiring on July 25, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Friday, 5:00 a.m. to 12:00 a.m., and Saturday and Sunday, 6:00 a.m. to 8:00 p.m.;

THAT the above condition shall appear on the certificate of occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all signage shall comply with regulations applicable in M1-1 zoning districts;

THAT all fire protection measures, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

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compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2006.

33-06-BZ

APPLICANT – Rampulla Associate Architects, for Carroll's Garden Florist Corporation, owner.

SUBJECT – Application February 28, 2006 – Zoning Variance under Z.R. §§ 72-21 to allow a horizontal and vertical enlargement of an existing one-story retail building (UG 6) located in an R1-2 district; contrary to Z.R. § 22-00. PREMISES AFFECTED – 1457 Richmond Road, N/S Richmond Road 0'0" from the intersection of Delaware Street, Block 869, Lot 359, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February, 13 2006, acting on Department of Buildings Application No. 500812472, reads, in pertinent part:

- “1. The proposed construction of a two (2) story building with retail sales (Use Group 6) on the first floor and offices (Use Group 6) on the second floor located within an R1-2 District is contrary to ZR 22-00 of the NYC Zoning Resolution.
2. There is no parking, loading or bulk regulations for a Use Group 6 building located within a Residential Zoning District as per ZR 23-00 and ZR 25-00.”; and

WHEREAS, this is an application under ZR § 72-21, to permit a vertical and horizontal enlargement of an existing lawful non-conforming one-story retail building (UG 6) located in an R1-2 district, which is contrary to ZR §§ 22-00, 23-00, and 25-00; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in the City Record, and then to decision on July 25, 2006; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, certain neighbors provided testimony in opposition to the proposal citing concerns about parking and access to light and air; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board,

including Chair Srinivasan and Commissioner Collins; and
WHEREAS, the site is located at the northwest corner of Richmond Road and Delaware Street; and

WHEREAS, the site has a total lot area of 4,201 sq. ft. and is currently improved upon with a 660 sq. ft. one-story garden supplies building with two loading docks and an accessory parking lot for six cars; and

WHEREAS, the subject lot is used by a floral and gardening business and is part of the same establishment as the business located across the street at 1461 Richmond Road; and

WHEREAS, 1461 Richmond Road is located within an R2 zoning district and is occupied by the business' main retail sales building and outdoor display area; and

WHEREAS, 1461 Richmond Road is not a part of the subject variance request; and

WHEREAS, the applicant proposes to construct a second-story horizontal and vertical extension to the garden supplies building; and

WHEREAS, the proposal includes converting the use of the garden supplies building to a sales office for high end paper goods, wedding favors, and invitations; accessory offices would be located on the new second floor; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the size and orientation of the lot; (2) its frontage on a heavily trafficked arterial street, (3) a distinct slope, and (4) the history of development on the site; and

WHEREAS, as to uniqueness, the applicant states that the lot is undersized at 4,210 sq. ft. (5,700 sq. ft. is the minimum required lot size in the R1-2 zoning district); and

WHEREAS, the applicant submitted a 400-ft. radius diagram that demonstrates that the subject lot is the only such undersized corner lot with frontage on the heavily trafficked Richmond Road; and

WHEREAS, the applicant asserts that because Richmond Road is a heavily trafficked main arterial road, residential development on the site would be compromised in terms of marketability; and

WHEREAS, as to slope, the applicant represents that the entire Delaware Street frontage of the site slopes down from the uppermost part of Delaware Street at 90.79 ft., down to Richmond Road at 77.65 ft.; and

WHEREAS, as discussed below, the slope makes a redevelop for residential use impractical; and

WHEREAS, as to the historic use of the site, the applicant represents that the subject property was originally located in a Retail zoning district before the enactment of the 1961 Zoning Resolution and work on the building commenced but was not completed prior to the change of the zoning district from Retail to R3-2; and

WHEREAS, the completion of the building was permitted pursuant to ZR § 11-322; and

WHEREAS, the subject garden supplies building, loading dock, and accessory parking lot have been in existence for nearly forty years; and

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WHEREAS, the Board finds that the aforementioned unique physical conditions, namely the size of, and the slope on, the site; its location on a heavily trafficked thoroughfare; and the historic use of the site as a garden supplies building, create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the applicant represents that there is no reasonable possibility that the development of the lot in strict conformity with the provisions of the Zoning Resolution will bring the applicant a reasonable return; and

WHEREAS, specifically, the applicant notes that advancement in the florist industry including the ability to import plants more easily, have made the current building obsolete and not marketable; and

WHEREAS, the applicant also notes that the existing building is not compliant with the Americans with Disabilities Act (ADA) since it is set into a hill which necessitates steps to gain access; and

WHEREAS, therefore, the applicant asserts that any retrofit to make the existing obsolete building ADA-compliant would not be cost effective; and

WHEREAS, the applicant concluded that a conforming scenario, that of a single-family dwelling, would not result in a reasonable return, due to the inefficiencies of the existing building and the other above-stated unique physical conditions; and

WHEREAS, the Board notes the inefficiencies of the building and the site and has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant asserts that all four of the corner properties at the intersection of Delaware Street and Richmond Road are occupied by non-conforming commercial uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram to support this assertion; and

WHEREAS, the applicant represents that the nearby uses include restaurants, a nail salon, professional offices, and several other shops; and

WHEREAS, the applicant also represents that the present use within the building has existed for nearly 40 years; and

WHEREAS, the Board notes that the proposed commercial FAR of 0.50 is within the R1-2 zoning district regulations for residential uses; and

WHEREAS, further, the Board notes that the residential style of the proposed building is compatible with the neighborhood character; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of

adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, in addition to the analyses of the conforming scenarios, the applicant also analyzed the proposal and concluded that it would realize a minimal return sufficient to overcome the site's inherent hardships; and

WHEREAS, accordingly, the Board finds that the proposal describes a minor enlargement and is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA058R, dated February 28, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit a vertical and horizontal enlargement of an existing lawful non-conforming one-story retail building (UG 6) located in an R1-2 district, which is contrary to ZR §§ 22-00, 23-00, and 25-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 6,

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2006"-three(3) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building, post-enlargement: a maximum of two stories, a total floor area of 2,006 sq. ft., a total FAR of 0.50, and six parking spaces, all as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2006.

46-06-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for West 55th Street Building, LLC, owner; Club H. NY, LLC, lessee. SUBJECT – Application March 17, 2006 – Special Permit pursuant to Z.R. Sections 73-03 and 73-36 to allow the proposed Physical Culture Establishment on the first floor and mezzanine of the subject 12-story commercial building. The first floor and mezzanine are currently vacant. The subject premises is located in a C6-2 zoning district within the Special Clinton District.

PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ellen Hay.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 3, 2006, acting on Department of Buildings Application No. 104325776, reads, in pertinent part:

“Proposed physical culture establishment including gymnasium is not permitted as of right in C6-2 zoning district. This is contrary to section 32-10 ZR.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C6-2 zoning district within the Special Clinton District, the establishment of a physical culture establishment (“PCE”) located on the first floor and mezzanine of an existing 12-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on July 25, 2006;

and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the north side of West 55th Street, between Ninth and Tenth Avenues; and

WHEREAS, the proposed PCE will occupy a total of 20,232 sq. ft. of floor area, with 17,453 sq. ft. on the first floor and 1,929 sq. ft. on the mezzanine; and

WHEREAS, the applicant represents that the PCE, operated as Club H. NY, will offer classes in physical improvement, strength training, weight training, group fitness programs, and cardio-vascular programs; and

WHEREAS, the PCE will have the following hours of operation: Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday from 5:00 a.m. to 9:00 p.m., and Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the establishment of the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA064M, dated March 16, 2006; and

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

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Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C6-2 zoning district within the Special Clinton District, the establishment of a PCE located on the first floor, and mezzanine of an existing 12-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 24, 2006"-(6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on July 25, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday from 5:00 a.m. to 9:00 p.m., and Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2006.

62-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Albert J and Catherine Arredondo, owners.

SUBJECT – Application April 10, 2006 – Pursuant to Z.R. § 72-21 Variance is to allow the addition of a second floor and attic to an existing one story, one family residence. The enlargement will increase the degree of non-compliance for the rear yard, side yards and exceed the permitted floor area.
PREMISES AFFECTED – 657 Logan Avenue, west side of Logan Avenue 100' south of Randall Avenue, Block 5436, Lot 48, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated March 8, 2006, acting on Department of Buildings Application No. 200859936, reads:

- “1. Proposed plans are contrary to ZR 23-461 in that the proposed straight line enlargement continues with the existing non-complying side yards and is less than the minimum required side yard of 5’-0”.
2. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30’-0”.
3. Proposed plans are contrary to ZR 23-141 in that the proposed floor area exceeds the permitted floor area.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side and rear yards and create a non-compliance as to floor area, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, and then to decision on July 25, 2006; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, the site is located on the west side of Logan Avenue, 100 feet south of Randall Avenue; and

WHEREAS, the site is 30 ft. in width and 100 ft. in length, with a total lot area of 3,000 sq. ft.; and

WHEREAS, the site is currently improved upon with a 895 sq. ft. one-story with cellar single family home and a one-story detached garage; and

WHEREAS, the site is the subject of a prior Board grant, under BSA Cal. No. 276-04-BZ, which permitted a home enlargement which increased the degree of non-compliance as to the side and rear yards; and

WHEREAS, at the time of the prior grant, the site was zoned R4, so the variance request was limited to issues relating to the rear and side yards; the requested floor area and FAR were within the amount permitted in the R4 zoning district; and

WHEREAS, the applicant was unaware of the re-zoning and since it became effective during the time that the prior variance was pursued, it has been rendered moot; and

WHEREAS, the applicant proposes to add a second story and attic to the existing one-story house; and

WHEREAS, this addition will increase the floor area from 895 sq. ft. (0.30 FAR) to 2,498 sq. ft. (FAR of 0.83); the maximum floor area permitted is 1,800 sq. ft. (FAR of 0.60 with attic); and

WHEREAS, the proposed enlargement will maintain the

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non-complying 1'-5" rear yard (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement will maintain the non-complying 1'-5" and 1'-8" side yards (in an R3A district one 8'-0" side yard is required); and

WHEREAS, the enlargement will maintain the complying front yard of 48'-6" (a minimum front yard of 10'-0" is required); and

WHEREAS, although the yards will remain the same, the proposed enlargement will increase the degree of non-compliance for the side and rear yards because the encroachments will be within the non-complying yards; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is encumbered with a significant slope; the house is located at the rear of the property on a hill; and there are existing non-complying front and rear yards; and

WHEREAS, the applicant represents that given the existing topography and grade change, it is not practical to construct an enlargement towards the front of the lot, and that any such enlargement might have negative impact on the adjacent dwelling to the south since it is constructed on the front of its lot; and

WHEREAS, the applicant represents that to construct a second story and attic in compliance with the required 30 ft. rear yard and 8 ft. side yard, there would only be an additional 269 sq. ft. of floor area on the second floor and 269 sq. ft. of floor area in the attic; construction of an addition to accommodate such limited floor area would not be practical given the costs involved; and

WHEREAS, the applicant has submitted a land use survey/property chart of all of the residentially-occupied zoning lots in the R3A and R4 zoning districts within a 400 ft. radius of the site, which shows that the subject premises is the only one-story dwelling located on a hill; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, namely the slope of the site and the location of the residence on the top of a hill at the rear of the lot with non-complying rear and side yards, create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that an enlargement using available floor area will comply with the applicable zoning requirements; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the bulk of the proposed building is consistent with the surrounding one- and two-family two-story residences; and

WHEREAS, the applicant's land use survey shows that 85 out of the 102 surrounding residences are two stories; and

WHEREAS, the applicant notes the since the adjacent neighbor's house is built to the front of the lot, it is most

compatible to retain the subject house at the rear of its lot and build above it rather than build within the large front yard and about the neighbor's home; and

WHEREAS, the applicant states that, with the consideration of the building placement, the impact on the surrounding residences' light and air is minimized; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single family home within non-complying side and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 10, 2006"–(9) sheets and "Received July 5, 2006"–(2) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.83; a floor area of 2,498 sq. ft.; side yards of 1'-5" and 1'-8"; a front yard of 48'-6"; and a rear yard of 1'-5";

THAT the total attic floor area shall not exceed 569 sq. ft., as confirmed by DOB;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2006.

146-04-BZ

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APPLICANT – Joseph Margolis for Jon Wong, Owner.
SUBJECT – Application April 5, 2006 – Pursuant to Z.R. § 72-21 – to allow the residential conversion of an existing manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Joseph Margolis, Ivan Khoury and Raymond Chan.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

194-04-BZ thru 199-04-BZ

APPLICANT – Augusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179), Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178), Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177), Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176), Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175), Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Mitchell Ross, N. Nick Perry, Wayne, Yvonne Saintil, Chandra Agustin and Yousif ?.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for continued hearing.

286-04-BZ & 287-04-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.

SUBJECT – Application August 18, 2004 – Under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED –

85-78 Santiago Street, west side, 11.74' south of McLaughlin Avenue, Block 10503, Part of Lot 13

(tent.#13), Borough of Queens.

85-82 Santiago Street, west side, 177' south of McLaughlin Avenue, Block 10503, Part of Lot 13

(tent.#15), Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 A.M., for deferred decision.

364-04-BZ

APPLICANT – Sheldon Lobel, P.C., for New Lots Avenue, LLC, owner.

SUBJECT – Application November 18, 2004 – pursuant to Z.R. §72-21 to permit the proposed construction of a one-story commercial building, for use as three retail stores, Use Group 6, located within a residential district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 690/702 New Lots Avenue, south side, between Jerome and Warwick Streets, Block 4310, Lots 5, 7, 8 and 10, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Earl Williams-CB, Katherine Johnson, Renee Spencer, Yvette ?, Mae Bettie and Etta M. Lewis.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

381-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Zvi Realty, LLC, owner.

SUBJECT – Application December 2, 2004 - Variance pursuant to Z.R. Section 72-21 to permit the construction of a four-story building to contain 20 residential units with 10 parking spaces. The site is currently an undeveloped lot which is located in an M1-1 zoning district. The proposal is contrary to district use regulations pursuant to Z.R. Section 42-00.

PREMISES AFFECTED – 83 Bushwick Place a/k/a 225-227 Boerum Street, northeast corner of the intersection of Boerum Street and Bushwick Place, Block 3073, Lot 97, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

128-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yisroel Y. Leshkowitz & Esther S. Leshkowitz, owner.

MINUTES

SUBJECT – Application May 24, 2005 – under Z.R. § 73-622 – to permit the proposed enlargement of an existing single family residence, located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and rear yard, is contrary to Z.R. § 23-141, § 23-461 and § 23-47.

PREMISES AFFECTED – 1406 East 21st Street, between Avenue “L” and “M”, Block 7638, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman, David Shteierman and Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 1:30 P.M., for continued hearing.

313-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Douglas Brenner and Ian Kinniburgh, owners.

SUBJECT – Application October 20, 2005 – under Z.R. § 72-21 to allow a proposed enlargement of an existing residential building located in C6-1 and R7-2 districts to violate applicable rear yard regulations; contrary to Section 23-47.

PREMISES AFFECTED – 26 East 2nd Street, Block 458, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Richard Lobel and Howard Chin

For Opposition: Stuart Beckerman and Neal Johnston.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for continued hearing.

298-05-BZ

APPLICANT – Rampulla Associates Architects, for Pasquale Pappalardo, owner.

SUBJECT – Application October 4, 2005 – Variance pursuant to Z.R. Section 72-21 to construct a new two-story office building (Use Group 6) with accessory parking for 39 cars. The premises is located in an R3X zoning district. The site is currently vacant and contains an abandoned greenhouse building from when the site was used as a garden center. The proposal is contrary to the district use regulations pursuant to Z.R. Section 22-00.

PREMISES AFFECTED – 1390 Richmond Avenue, bound by Richmond Avenue, Lamberts Lane and Globe Avenue, Block 1612, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for decision, hearing closed.

10-06-BZ

APPLICANT – Harold Weinberg, for David Cohen, owner.

SUBJECT – Application January 12, 2006 – Pursuant to ZR 73-622 Special Permit for the enlargement of a single family residence which increase the degree of non-compliance for lot coverage and side yards (23-141 & 23-48), exceeds the maximum permitted floor area (23-141) and proposes less than the minimum rear yard (23-47). The premise is located in an R4 zoning district.

PREMISES AFFECTED – 2251 East 12th Street, east side 410’ south of Avenue V between Avenue V and Gravesend Neck Road, Block 7372, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

11-06-BZ

APPLICANT – The Law Office of Frederick A. Becker for Miriam Schubert and Israel Schubert, owner.

SUBJECT – Application January 18, 2006 – Under Z.R. § 73-622 to permit the enlargement to an existing single family residence, located in an R-2 zoning district, which do not comply with the zoning requirements for floor area ratio, open space ratio and rear yard (Z.R. § 23-141 and § 23-47). PREMISES AFFECTED – 1245 East 22nd Street, East 22nd Street between Avenue K and Avenue L, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman, Fredrick A. Becker and David Shtierman..

ACTION OF THE BOARD – Laid over to August 15, 2006, at 1:30 P.M., for continued hearing.

55-06-BZ

APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.

SUBJECT – Application March 24, 2006 – Zoning variance pursuant to ZR Section 72-21 to allow a proposed office building in an R3-2/C1-1 (NA-1) district to violate applicable rear yard regulations; contrary to ZR sections 33-26 and 33-23. Special Permit is also proposed pursuant to ZR Section 73-44 to allow reduction in required accessory parking spaces.

PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot (Tentative 92, 93, 94), Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

MINUTES

For Applicant: Phil Rampulla.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

127-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Kaufman Center, owner.

SUBJECT – Application June 16, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to enlarge an existing community facility building. Proposal is non-compliant regarding floor area ratio (FAR) and rear yard. The site is located within a C4-7(L) zoning district; contrary to Z.R. 33-123 and 33-26.

PREMISES AFFECTED – 129 West 67th Street, north side of 67th Street, between Broadway and Amsterdam Avenue, Block 1139, Lots 1, 8, 57, 107, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Lydia Kontos and Alex Lamis.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to August 15, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 6:40 P.M.

BULLETIN

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Volume 91, Nos. 31-32

August 17, 2006

DIRECTORY

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SATISH BABBAR, *Vice-Chair*

CHRISTOPHER COLLINS

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Tuesday, August 8, 2006**

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166-06-BZY

84-59 162nd Street, South of the corner formed by the intersection of 84th Drive and 162nd Street, Block 9786, Lot 7, Borough of **Queens, Community Board: 8**. Extension of Time for construction.

167-06-A

519 Browns Boulevard, South side Browns Boulevard, 18.87' north of mapped Beach 182nd Street., Block 16340, Lot 50, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3-Proposed reconstruction and enlargement of existing single family dwelling not fronting a mapped street.

168-06-A

176 Reid Avenue, West of Reid Avenue(unmapped street) north of Breezy Point Boulevard., Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3-Proposed reconstruction and enlargement of an existing single family home not fronting on a mapped street.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

SEPTEMBER 19, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 19, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

167-55-BZ

APPLICANT – Vassalotti Associates Architects, for Gargano Family Patnership, owner; Joseph Brienza, lessee. SUBJECT – Application April 25, 2006 – Pursuant to ZR§11-411 & ZR§11-412 to Reopen and Extend the Term of Variance/Waiver for a Gasoline Service Station (Gulf Station), with minor auto repairs which expired on October 7, 2005 and for an Amendment to permit the sale of used cars. The premise is located in R3-1 zoning district.

PREMISES AFFECTED – 20-65 Clintonville Street, north corner of the intersection of Clintonville Street and Willets Point Boulevard, Block 4752, Lot 1, Borough of Queens

COMMUNITY BOARD #7Q

131-93-BZ

APPLICANT – Eric Palatnik, P.C., for Al & Selwyn, Inc., owner.

SUBJECT – Application April 10, 2006 – Extension of Term/Amendment - pursuant to Z.R. §§11-411 & 11-412 to extend the term of an automotive service station which expired on November 22, 2004. The application seeks an amendment of the previous BSA resolution so as to authorize the enlargement of the existing one story masonry building to include two additional service bays and to expand the auto sales use to accommodate the display of twenty motor vehicles an increase from the previously approved five motor vehicles. The subject premises is located in a C2-2/R5 zoning district.

PREMISES AFFECTED – 3743-3761 Nostrand Avenue, north of the intersection of Avenue “Y”, Block 7422, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #15BK

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to

ZR 11-411 & 11-413 For the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

171-95-BZ

APPLICANT – Law Office of Howard Goldman, LLC, for The Chapin School Limited, owner.

SUBJECT – Application July 21, 2006 – Pursuant to ZR §§72-01 & 72-22 for an amendment to a not-for-profit all girls school (The Chapin School) for a three floor enlargement which increases the floor area and the height of the building. The premise is located in an R8B/R10A zoning district.

PREMISES AFFECTED – 100 East End Avenue, between 84th and 85th Streets, Block 1581, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

228-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Five D's Irrevocable Trust, owner.

SUBJECT – Application July 15, 2006 – Extension of Term of a previously granted special permit under section 73-44 of the zoning resolution which permitted the reduction, from 40 to 25 in the number of required accessory off-street parking spaces for a New York vocational and educational counseling facility for individuals with disabilities (Use Group 6, Parking Requirement Category B1) located in an M1-1 zoning district.

PREMISES AFFECTED – 1209 Zerega Avenue, west side of Zerega Avenue between Ellis Avenue and Gleason Avenue, Block 3830, Lot 44, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEALS CALENDAR

69-06-BZY

APPLICANT – Stuart A. Klein, for SMJB Associates, LLC, owner.

SUBJECT – Application April 19, 2006 – Proposed extension of time to complete construction of a minor

CALENDAR

development pursuant to ZR 11-331 for a six- story mixed use building. Prior zoning R-6. New zoning district is R5-B as of April 5, 2006.

PREMISES AFFECTED – 1599 East 15th Street, northeast corner of East 15th Street and Avenue P, Block 6762, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

90-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner.

SUBJECT – Application May 8, 2006 – Proposal to permit reconstruction and enlargement of an existing one family dwelling located in the bed of a mapped street, and the upgrade of an existing private disposal system in the bed of a mapped street and service lane is contrary to Section 35, Article 3, General City Law and Buildings Department Policy.

PREMISES AFFECTED – 9 Bedford Avenue, north side of Bedford Avenue, intersection of mapped Bayside Drive and Beach 202nd Street, Block 163, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

167-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Janet and John Durante, owners.

SUBJECT – Application July 31, 2006 – Proposed reconstruction and enlargement of existing single family dwelling not fronting a mapped street is contrary to Article 3 Section 36 of the General City Law. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 519 Browns Boulevard, Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

168-06-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Tom Elbe, lessee.

SUBJECT – Application August 3, 2006 – Proposed reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 176 Reid Avenue, west of Reid Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

SEPTEMBER 19, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 19, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

344-05-BZ

APPLICANT– Rothkrug Rothkrug & Spector, for Cornerstore Residence, LLC, owner.

SUBJECT – Application December 2, 2006 – Variance pursuant to Z.R. §72-21 to permit the construction of a two-family dwelling that does not permit one of the two front yards required for a corner lot. The premise is located in an R4 zoning district. The proposal requests a waiver of Z.R. Section 23-45 relating to the front yard.

PREMISES AFFECTED – 109-70 153rd Street aka 150-09 Brinkerhoff Avenue, northwest corner of 153rd Street and 110th Avenue, Block 12142, Lot 21, Borough of Queens.

COMMUNITY BOARD #12Q

29-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Iliya Honovich, owner.

SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR Section 72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards requirements; contrary to ZR sections 23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district.

PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th Street and East 19th Street, Block 7463, Lots 47, 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 8, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, May 16, 2006 and Wednesday Morning May 17, 2006 as printed in the bulletin of May 19, 2006, Vol. 91, No. 21 & 22. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

499-29-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum, owner; BP Products, lessee.

SUBJECT – Application March 3, 2006 – Application for the Extension of Term of an Automotive Service Station with an accessory automotive repair establishment located in a C1-2/R3-2 zoning district. The term expired on March 23, 2006. The application is seeking a 10 year extension.

PREMISES AFFECTED – 248-70 Horace Harding Expressway, southwest corner of Marathon Parkway, Block 8276, Lot 660, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application, pursuant to ZR § 11-411, for an extension of the term of the previously granted variance, which permitted an automotive service station and which expired on March 23, 2006; and

WHEREAS, a public hearing was held on this application on May 16, 2006, after due notice by publication in *The City Record*, with continued hearing on July 18, 2006, and then to decision on August 8, 2006; and

WHEREAS, Community Board 11, Queens, and the Queens Borough President recommend approval of this application; and

WHEREAS, the site located on the southwest corner of the Horace Harding Expressway and Marathon Parkway; and

WHEREAS, the site is located within a C1-2(R3-2) zoning district, and is improved upon with an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 13, 1952 when, under the subject

calendar number, the Board granted a variance to construct and maintain a gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; it was most recently extended on May 27, 1998 for a term of ten years from the expiration of the prior grant (March 23, 1996); and

WHEREAS, during its review of the application, the Board identified the removal of two parking spaces; and

WHEREAS, at hearing, the Board asked the applicant to explain the removal of two parking spaces; and

WHEREAS, the applicant responded that one parking space was removed to accommodate a handicapped-accessible parking space and the other was removed to improve traffic circulation; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* the resolution, as adopted on June 13, 1952, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from March 23, 2006, to expire on March 23, 2016, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘August 3, 2006’-(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 23, 2016;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review all signage for compliance with C1-1 zoning district regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 402284906)

Adopted by the Board of Standards and Appeals, August 8, 2006.

MINUTES

286-79-BZ

APPLICANT – Walter T. Gorman, P.E., for Amerada Hess Corp., owner.

SUBJECT – Application April 13, 2006 – Proposed Extension of Term for an automobile service station located in a C1-2/R2 zoning district. The application also seeks to waive the Board's rules of practice and procedure and extend the term of the special permit for a period of ten (10) years which expired on June 19, 2004 and extend it to June 19, 2014.

PREMISES AFFECTED – 219-28 to 219-38 Hillside Avenue, southeast corner of Springfield Boulevard, Block 10680, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of the term for a previously granted special permit for an gasoline service station, which expired on June 19, 2004; and

WHEREAS, a public hearing was held on this application on July 7, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

WHEREAS, Community Board 13, Queens, and the Queens Borough President recommended approval of this application; and

WHEREAS, the premises is located on the southeast corner of Hillside Avenue and Springfield Boulevard; and

WHEREAS, the site is located within a C1-2 (R2) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 19, 1979 when, under the subject calendar number, the Board granted an application for a gasoline service station; and

WHEREAS, subsequently, the Board extended the term of the special permit, most recently on April 15, 1997 for a period of ten years from the expiration of the prior grant (June 19, 1994); and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, at hearing, the Board asked for confirmation that a certificate of occupancy (CO) based on the last extension was obtained; and

WHEREAS, in response, the applicant conceded that no CO was obtained; and

WHEREAS, as indicated below, a CO must be obtained within 18 months of this grant; and

WHEREAS, accordingly, based upon the submitted

evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on June 19, 1979, as subsequently extended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 19, 2004, to expire on June 19, 2014, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘April 13, 2006’–(5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on June 19, 2014;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT a new certificate of occupancy shall be obtained by February 8, 2008;

THAT DOB shall review and approve the layout of the onsite parking;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 402308668)

Adopted by the Board of Standards and Appeals, August 8, 2006.

173-95-BZ

APPLICANT – Stephen J. Rizzo, Esq., for 80 East 85th Street Company, owner; David Barton Gym Corp., lessee.

SUBJECT – Application March 10, 2006 – Pursuant to ZR §73-11 and §73-36 for the Extension of Term/Waiver of a Physical Culture Establishment (David Barton Gym) in a portion of the first floor and the entire second floor of a 30 story residential building.

PREMISES AFFECTED – 30 East 85th Street, Madison Avenue and East 85th Street, Block 1496, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Karen Samardo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the

MINUTES

Rules of Practice and Procedure and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on August 15, 2005; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located at the southwest corner of Madison Avenue and East 85th Street; and

WHEREAS, the site is occupied by a 30-story mixed use building, located within a C5-1 (Special Madison Avenue Preservation) zoning district, with commercial uses on the first and second floor and residential use above; and

WHEREAS, the PCE is operated as a David Barton Gym; and

WHEREAS, on August 15, 1995, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of a PCE in a portion of the first floor and on the entire second floor of the subject building; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, at hearing the Board asked the applicant if the PCE provided sufficient sound attenuation between it and residential uses within the building; and

WHEREAS, in response, the applicant represents that the implemented sound attenuation measures have been effective and that there have not been any noise complaints; and

WHEREAS, accordingly, the Board finds that a ten-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated August 15, 1995, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked “Received August 3, 2006”–(5) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from August 15, 2005, expiring August 15, 2015;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or

configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 8, 2006.

83-00-BZ

APPLICANT – Eric Palatnik, P.C., for KFC US Properties, Inc., owner.

SUBJECT – Application September 21, 2005 – Reopening for a waiver of the Rules of Practice and Procedure and for an extension of the term of special permit which expired September 26, 2003.

PREMISES AFFECTED – 87-11/21 Northern Boulevard, northern corner of 88th Street, Block 1417, Lot 36, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term of a special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on September 26, 2003, as well as an amendment to extend the hours of operation; and

WHEREAS, a public hearing was held on this application on February 28, 2006, after due notice by publication in *The City Record*, with continued hearings on April 11, 2006, May 16, 2006, and July 11, 2006, and then to decision on August 8, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, Community Board 3, Queens, and the Queens Borough President recommend approval of this application on the condition that hedges be planted at the front of the site on Northern Boulevard and sidewalk trees be planted on the 88th Street side; and

WHEREAS, during the hearing process, neighbors of the site provided testimony in opposition to the approval, citing concerns about the amplified menu board that is part of the drive-through facility; these concerns are addressed below; and

WHEREAS, the site is located on the northwest corner of Northern Boulevard and 88th Street, within a C1-2 (R4) zoning district; and

WHEREAS, the site has a lot area of 12,735 sq. ft., and is occupied by an existing eating and drinking establishment (a Kentucky Fried Chicken fast food restaurant), with a drive-

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through facility and nine accessory parking spaces; and

WHEREAS, on September 26, 2000, under the subject calendar number, the Board granted a special permit authorizing the operation of this establishment with an accessory drive-through facility for a term of three years, which expired on September 26, 2003; and

WHEREAS, in addition to an extension of term, the applicant requests Board approval of an extension of the hours of operation to 1:00 a.m., daily, for the drive-through; and

WHEREAS, the previously-approved hours of operation for the drive-through are 10:30 a.m. to 11:00 p.m., Sunday through Thursday, and 10:30 a.m. to 12:00 a.m., Saturday and Sunday; and

WHEREAS, the applicant states that the restaurant needs the additional hours of operation in order to compete with nearby fast food restaurants; and

WHEREAS, the Board asked the applicant to examine the volume of the amplified board and to see if the sound could be lowered or re-directed away from the neighbor's windows; and

WHEREAS, the applicant represents that the amplified menu board was defective and that a new, more advanced sound system which is able to detect noise level and reduce sound emissions would be installed; and

WHEREAS, the applicant submitted evidence into the record that the new sound system was installed on July 1, 2006; and

WHEREAS, the applicant represents that the sound level from ten feet away is less than 45 decibels; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term and amendment is appropriate, so long as the restaurant complies with all relevant conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, said resolution having been adopted on September 26, 2000, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from September 26, 2003, and to permit the extension of hours of operation; *on condition* that all work and site conditions shall comply with drawings marked 'Received March 28, 2006'– (7) sheets; and *on further condition*:

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

THAT the term of this grant shall be for five years from the expiration of the prior grant, to expire on September 26, 2008;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all garbage removal shall be performed between the hours of 7 a.m. and 11 p.m.;

THAT the sound emitted from the amplified menu board shall not exceed 45 decibels;

THAT the hours of operation for the drive-through shall be from 10:30 a.m. to 1 a.m. on weekdays, and from 10:30 a.m. to 1 a.m. on Saturday and Sunday;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB App. No. 401076483)

Adopted by the Board of Standards and Appeals, August 8, 2006.

182-04-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Chelsea Village Associates, owner; Harmic III, LLC, lessee.

SUBJECT – Application January 17, 2006 – Reopening for an amendment permit proposed eating and drinking establishment (comedy theater), Use Group 12, on a zoning lot, split between a C6-2A and R8B zoning district, of which a portion is located in the R8B district, is contrary to Z.R. §22-10.

PREMISES AFFECTED – 351/53 West 14th Street, north side, between Eighth and Ninth Avenues, Block 738, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Steve Sinacori.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, which permitted the establishment of an eating and drinking establishment in an existing building at the premises; and

WHEREAS, a public hearing was held on this application on July 13, 2006 after due notice by publication in the *City Record*, with continued hearing on July 18, 2006, and then to decision on August 8, 2006; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on a zoning lot split between C6-2A and R8B zoning districts, and is partially within the Gansevoort Market Historic District; and

WHEREAS, the subject zoning lot is a through lot located

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on the north side of West 14th Street and the south side of West 15th Street, between 8th and 9th Avenues, with a depth of approximately 206.6 feet and frontages of 50 feet along each street; and

WHEREAS, the zoning lot is currently improved with two residential buildings, with addresses of 362/64 West 15th Street and 351/53 West 14th Street; and

WHEREAS, the record indicates that the subject building has a one story portion and a four story portion, with residential use on the upper stories; and

WHEREAS, the ground floor extends 150 feet in depth from the front of the building, with 103.25 feet (69 percent) located in the C6-2A district and the remaining 46.75 feet (31 percent) located in the R8B district; and

WHEREAS, on September 21, 2004, the Board granted an application under ZR § 72-21, to permit the establishment of an eating and drinking establishment (specifically, a comedy theater), Use Group 12, on the ground floor of this building, in the portion that is within the R8B zoning district, contrary to ZR § 22-10; and

WHEREAS, the applicant proposes to eliminate the proposed 1,345 sq. ft. mezzanine previously approved by the Board in the original grant, and to expand the proposed cellar space; the applicant also proposes to rearrange some of the functions of the establishment; and

WHEREAS, specifically, the applicant represents that the kitchen area will be relocated to the proposed expanded cellar space, the women's lavatory in the cellar will be expanded, and offices, staff bathrooms and storage space will be added to the cellar; and

WHEREAS, the cellar will also provide space for a waiting area and a handicapped accessible restroom (which were formerly to be located on the proposed mezzanine); and

WHEREAS, the Board notes that all of the cellar space will be located completely below grade and will not alter the building envelope nor add zoning floor area; and

WHEREAS, the Board further notes that the cellar expansion does not increase the square footage of the performance space nor the patron capacity; and

WHEREAS, thus, the effect of this cellar expansion is negligible; and

WHEREAS, the plans include the provision of an elevator in order to make the cellar handicapped-accessible; and

WHEREAS, the applicant also proposes to replace the existing obsolete heating, ventilation, and air conditioning (HVAC) systems located on the roof of the one-story portion of the building; and

WHEREAS, the applicant represents that the new equipment will be installed with the manufacturer's sound attenuation package, including an insulated sound barrier wrapped around each unit; and

WHEREAS, additionally, the applicant represents that the HVAC equipment will be located as far as possible from residential uses and will be enclosed by a fence covered with acoustical sound absorbing panels; and

WHEREAS, in support of these assertions, the applicant

submitted a letter from a sound attenuation consultant stating that the HVAC equipment as proposed will comply with New York City's Noise Code Standards; and

WHEREAS, the Board notes that the applicant worked with the building owner and neighbors to try to minimize the impact of the new HVAC equipment; and

WHEREAS, the Board notes that the new HVAC systems will occupy a larger footprint than the existing systems but will have improved sound attenuation measures; and

WHEREAS, the Board concludes that the proposed amendment does not affect the prior findings for the variance; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

Resolved, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on September 21, 2004, so that as amended this portion of the resolution shall read: "to permit the removal of the proposed mezzanine, the enlargement of the proposed cellar and other interior reconfigurations, and the relocation and replacement of the HVAC systems, *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received July 5, 2006'-(6) sheets; and *on further condition*:

THAT all HVAC equipment shall be installed as indicated on the BSA-approved plans, with sound attenuation, and shall be maintained in good working order;

THAT the above condition shall appear on the certificate of occupancy;

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect;

THAT all exiting requirements, including from the cellar area, shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application. No. 103733925)

Adopted by the Board of Standards and Appeals, August 8, 2006.

565-57-BZ

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APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner; Vandale Motors Incorporated, lessee.

SUBJECT – Application January 25, 2005 – Extension of Term/Amendment – to include a height change from the approved 17'-3" to 28'6" for the purpose of adding a storage mezzanine.

PREMISES AFFECTED – 5832 Broadway, a/k/a 196-198 West 239 Street, South east corner of Broadway and 239 Street, Block 3271, Lot 198, Borough of the Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Arcadius Kaszuba and Michael Rubinstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

1077-66-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Richmond Petroleum, Incorporated, owner.

SUBJECT – Application May 10, 2006 – Pursuant to ZR §72-01 & §72-22 to reopen and amend the BSA resolution for a change of use to an existing gasoline service station with minor auto repairs. The amendment is to convert the existing auto repair bays to a convenience store as accessory use to an existing gasoline service station. The premise is located in C2-2 in an R3-2 zoning district.

PREMISES AFFECTED – 1320 Richard Terrace, Southwest corner of Bement Avenue, Block 157, Lot 9, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Carl Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

301-85-BZ

APPLICANT – Francise R. Angelino, Esq., for 58 East 86th Street, LLC, owner.

SUBJECT – Application April 25, 2006 – Application for an extension of term for a previously approved use variance which allowed ground floor retail at the subject premises located in a R10(PI) zoning district. In addition the application seeks a waiver of the Board's Rules and Procedures for the expiration of the term on February 11, 2006.

PREMISES AFFECTED – 58 East 86th Street, South side East 86th Street between Park and Madison Avenues, Block 1497, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino and Andrew Duer.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

197-00-BZ, Vol. II

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for SLG Graybar Sublease, LLC, owner; Equinox 44th Street Inc., lessee.

SUBJECT – Application November 2, 2005 – Pursuant to ZR §73-11 and ZR §73-36 Amendment to a previously granted Physical Culture Establishment (Equinox Fitness) for the increase of 4,527 sq. ft. in additional floor area.

PREMISES AFFECTED – 420 Lexington Avenue, 208'-4" north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

112-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Doris Laufer, owner.

SUBJECT – Application May 15, 2006 – Pursuant to ZR §72-01 and §72-21 for an Extension of Time to obtain a Certificate of Occupancy which expired on November 20, 2003 for a Community Use Facility-Use Group 4 (Congregation Noam Emimelech) and an Amendment that seeks to modify the previously approved plans for floor area/FAR – ZR §24-11, front wall height-ZR §24-521, front yard-ZR §24-31, side yard-24-35, lot coverage-ZR §24-11 and ZR §23-141(b) and off-street parking requirement for dwelling units-ZR §25-22.

PREMISES AFFECTED – 102 & 1406 59th Street, Block 5713, Lots 8 & 10, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for adjourned hearing.

59-02-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Reopen and amend a previously granted waiver under Section 35 of the

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General City Law that allowed the construction of a two family house located in the bed of mapped street (24th Avenue). Proposal seeks to add an additional two family dwelling in the bed of mapped street thereby making three two-family dwellings. Premises is located within an R3-2 Zoning District. Companion cases 160-02-A II and 27-06-A. PREMISES AFFECTED – 23-81 89th Street, 583.67' northeast of the corner of Astoria Boulevard and 89th Street, Block 1101, Lot 6, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Kenny Lee and Carlos Aguirre.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

160-02-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a two family dwelling in the bed of a mapped street (24th Avenue). Proposal seeks to add an additional two family dwelling in the bed of a mapped street thereby making three two family dwellings. Premises is located within an R3-2 Zoning District .Companion cases 59-02-A and 27-06-A.

PREMISES AFFECTED – 24-01 89th Street, 532.67' northeast of the corner of Astoria Boulevard and 89th Street, Block 1101, Lot 8, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Kenny Lee and Carlos Aguirre.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

27-06-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Application filed under Section 35 of the General City Law to allow the construction of a two family dwelling located within the bed of a mapped street (24th Avenue). Premises is located within a R3-2 Zoning District. Companion cases 59-02-A II and 160-02-A II.

PREMISES AFFECTED – 23-83 89th Street, 561.67' northeast, the corner of Astoria Boulevard and 89th Street, Block 1101, Lot 7, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Kenny Lee and Carlos Aguirre.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

212-03-A

APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.

SUBJECT – Application April 4, 2006 – Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a single family dwelling located partially within the bed of a mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans. PREMISES AFFECTED – 129-32 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block 12891, Lot 2, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik and Deborah Fulton.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

213-03-A

APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.

SUBJECT – Application April 4, 2006 – Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a single family dwelling located within the bed of mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans.

PREMISES AFFECTED – 129-36 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block 12891, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik and Deborah Fulton.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

153-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for MSP Development, owner.

SUBJECT – Application filed on June 28, 2005 – Proposed construction of a two family homes, which lies in the bed of a mapped street (141st Avenue) which is contrary to Section 35 of the General City Law. Premises is located in R3-2 zoning district.

PREMISES AFFECTED – 222-50 and 222-54 141st Avenue, Block 13149, Lot 148, 48, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 7, 2005, acting on Department of Buildings Application Nos. 402077195 and 402077186 which reads, in pertinent part:

“The proposed construction is located within the bed of a mapped street contrary to Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required.”; and

WHEREAS, a public hearing was held on this application on May 9, 2006 after due notice by publication in the *City Record*, with continued hearings on June 13, 2006 and July 18, 2006, and then to decision on August 8, 2006; and

WHEREAS, by letters dated April 27, 2006 and July 31, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated September 7, 2005, the Department of Environmental Protection (DEP) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that it forwarded the entire application, including the proposed site plan, to the Department of Transportation (DOT) on August 2, 2005; and

WHEREAS, DOT responded on March 7, 2006, stating that it reviewed the application and advising the Board that the development of the lots will create a sight distance problem for the vehicular traffic given the proximity to the Long Island Railroad tracks; and

WHEREAS, additionally, DOT states that the proposed development will be so located in the bed of the street such that it will prevent future development of a roadway connection to 224th Street from 141st Avenue; and

WHEREAS, the Board notes that the March 7, 2006 letter did not indicate any DOT intent to take the applicant’s property

for the purposes of construction of this proposed roadway connection, nor did it indicate that the proposed connection was part of a ten-year capital plan; it also did not indicate any time-frame for when this connection might be constructed; and

WHEREAS, by letter dated April 3, 2006, the applicant asked DOT for an explanation of the sight distance issue; and

WHEREAS, the record does not contain any response to this letter from DOT; and

WHEREAS, in a letter dated May 11, 2006, the Board: (1) asked DOT for clarification as to its concern about compromised sight distance; and (2) requested that DOT submit a map showing the exact location of the proposed roadway connection relative to the premises and the proposed residential development; and

WHEREAS, the Board asked that DOT respond within 20 days of the date of the letter, but DOT did not submit any response in this time frame, and the case was subsequently closed; and

WHEREAS, the Board notes that there is no evidence in the record supporting the contention that the proposed development would impact sight distance for vehicular traffic given the proximity to the Long Island Railroad tracks; and

WHEREAS, further, as discussed above, there is no evidence in the record supporting the contention that the proposed development will prevent future development of a roadway connection to 224th Street from 141st Avenue, that the subject property will be taken for this purpose, or that the connection is part of an approved ten-year capital plan; and

WHEREAS, prior to the decision date, DOT informed the Board that it was no longer concerned about a potential sight distance problem, and that it would accept the proposal so long as the applicant could show that the development would not affect the sidewalks; and

WHEREAS, the applicant subsequently submitted a revised site plan showing the relationship of the proposed buildings to the sidewalk, which DOT indicated was acceptable; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, April 20, 2006, acting on Department of Buildings Application Nos. 402077195 and 402077186, and is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 8, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2006.

299-05-A

APPLICANT – Sheldon Lobel, P.C., for Henry Cheung, owner.

SUBJECT – Application October 4, 2005 – Proposal to build one, two story, one family home which lies in the bed of a mapped street (Getz Avenue), which is contrary to Section 35 of the General City Law, Borough of Queens.

PREMISES AFFECTED – 369 Wilson Avenue, north side of Wilson Avenue between Eltingville Boulevard and Ridgewood, Block 5507, Lot 13, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Zara Fernandes.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated September 8, 2005, acting on Department of Buildings Application No. 500667904, reads, in pertinent part:

“The proposed building is in the bed of a mapped street and contrary to Article 3, Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required.”; and

WHEREAS, a public hearing was held on this application on June 6, 2006, after due notice by publication in the *City Record*, with a continued hearing on July 11, 2006, and then to decision on August 8, 2006; and

WHEREAS, the Board notes that the subject lot fronts on Wilson Avenue, on a block bounded by Wilson, Eltingville Boulevard, Lamoka Avenue and Ridgewood Avenue; this block has another right of way (Getz Avenue) mapped through its center, but only a small portion of Getz is opened; and

WHEREAS, by letter dated May 31, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated April 18, 2006, the Department of Environmental Protection states that it has reviewed the application and requires that the applicant amend Drainage Plan No. D-2-2 for Getz Avenue between Wilson Avenue and Lamoka Avenue to create high points for both a 12-inch diameter storm sewer and a 10-inch diameter sanitary sewer prior to obtaining permits for sewer connection; and

WHEREAS, in response to DEP’s request, the applicant

has agreed to amend the drainage plan; and

WHEREAS, by letter dated February 17, 2006, the Department of Transportation has reviewed the application and has indicated that the applicant’s property is not presently included in its Capital Improvement Program; and

WHEREAS, however, DOT also noted to the Board in this letter that a lot to the north of the site (Lot 109) is landlocked and that the proposed construction may affect that property’s access to Wilson Avenue; the Board asked that the applicant respond to this concern; and

WHEREAS, the applicant responded that Lot 109 has access to Eltingville through Lot 31, which is in the same ownership as Lot 109; thus, Lot 109 would not need access through the subject site; and

WHEREAS, the applicant has submitted evidence of this representation, in the form of records of the City’s Department of Finance, tax maps and photographs, which the Board finds acceptable; and

WHEREAS, the applicant also notes that for the subject site to be used as access for Lot 109 to Wilson Avenue, the City would need to condemn both the subject site and the site to the immediate north (Lot 11, which is in between the subject site and Lot 109); the applicant confirmed that such roadway construction is not within DOT’s 10-year Capital Improvement Program; and

WHEREAS, accordingly, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated September 8, 2005, acting on Department of Buildings Application No. 500667904, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received April 6, 2006”- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall not issue a building permit prior to DEP’s approval of the amended drainage plan;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2006.

355-05-BZY

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APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue, Block 869, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006, June 6, 2006, June 20, 2006, and July 18, 2006, and then to decision on August 8, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice Chair Babbar and Commissioner Collins; and

WHEREAS, Community Board 7, Brooklyn, opposed the granting of any relief to the applicant, citing concerns about the various violations and stop work orders issued by the Department of Buildings (“DOB”) during construction; and

WHEREAS, the Concerned Citizens of Greenwood Heights and the South Park Slope Community Group also opposed the granting of any relief to the applicant, citing concerns similar to the Community Board’s; all of these concerns are addressed below; and

WHEREAS, in addition, Public Advocate Gotbaum and State Senator Montgomery opposed this application; and

WHEREAS, the subject premises consists of one 2,004 sq. ft. lot on the north side of Prospect Avenue between Seventh and Eighth Avenues; and

WHEREAS, the subject premises was formerly located within an R5 zoning district; and

WHEREAS, the subject premises is proposed to be developed with a three-family, three-story plus cellar residential building; and

WHEREAS, however, on November 16, 2005 (hereinafter, the “Rezoning Date”), the City Council voted to enact the South Park Slope rezoning proposal, which changed the zoning district from R5 to R5B, rendering the proposed

development non-complying as to floor area and parking; and
WHEREAS, because the foundation construction was commenced but not completed as of the Rezoning Date, the building permit under which construction proceeded lapsed by operation of law; and

WHEREAS, the developer now makes this application pursuant to ZR § 11-331, to renew the building permit so that foundation construction can be completed; and

WHEREAS, ZR § 11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, because the proposed development contemplates construction of one building on a single zoning lot, it meets the definition of a “minor development”, as defined in ZR § 11-31(c); and

WHEREAS, ZR § 11-31(a) reads: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that the relevant building permit was lawfully issued to the owner of the subject premises; and

WHEREAS, specifically, the record indicates that on September 28, 2005, a new building permit (Permit No. 301949523-01-NB; hereinafter, the “NB Permit”) for the proposed development was lawfully issued to the owner of the premises by the Department of Buildings; and

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WHEREAS, during the public hearing process on this application, DOB audited the NB Permit and objections were issued; and

WHEREAS, these objections were subsequently resolved; and

WHEREAS, the applicant represents that, as of the Rezoning Date, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, the applicant represents that excavation of the site commenced on September 18, 2005; and

WHEREAS, however, on September 22, 2005, DOB issued violations to the site for failure to provide protection at the sides of the excavation (the "Protection Violation") and failure to provide an eight ft. high fence (the "Fence Violation"); DOB also issued a stop work order ("SWO") on this date; and

WHEREAS, the applicant states that the violations were resolved over the next three days, and that work resumed on September 28, 2005; and

WHEREAS, the applicant further states that foundation work commenced on the southerly portion of the site, while excavation and underpinning work continued on the westerly lot line; and

WHEREAS, the applicant represents that excavation continued on the other portions of the site and was completed on the easterly part of the site on or around October 28, 2005; the underpinning on this part of the lot was also completed as of this date; and

WHEREAS, the applicant states that from October 24th to the 28th, foundation construction commenced, which included the pouring of footings and foundation walls; and

WHEREAS, the applicant states that excavation of the entire site, including the northerly part, was completed on or around October 31, 2005, and that foundation work continued thereafter until November 9, 2005; and

WHEREAS, however, on November 9th, DOB issued another violation and stop work order, on the basis that underpinning on the westerly side of the lot was poured three inches in excess of the approved plans (the "Underpinning Violation"); and

WHEREAS, the applicant states that corrective action as to this underpinning was then undertaken; and

WHEREAS, during the hearing process, the applicant initially cited to another DOB violation and SWO, issued on the Rezoning Date, in support of the contention that excavation was completed and substantial progress had been made on foundations; and

WHEREAS, this violation, which was issued because of the rezoning, contains the following notation "Foundation approx. 50 percent completed"; and

WHEREAS, the applicant stated that actual completion of foundation work was at approximately 75 percent; and

WHEREAS, however, at hearing, the Board informed the applicant that while probative, the DOB inspector's assessment of the site as of the Rezoning Date as reflected in the violations did not constitute dispositive evidence in support of the application, especially in light of the discrepancy between the

DOB observation and the applicant's own representations; and

WHEREAS, thus, the Board requested that the applicant provide an accurate color-coded set of plans, showing the extent of work completed versus what remained, and also suggested that any pictures taken by DOB of the site be obtained and submitted into the record; and

WHEREAS, the Board also noted that there was a discrepancy between the amount of concrete poured as represented by the applicant in the statement of facts as opposed to the amount reflected in the back-up evidence, such as the contractor's affidavit and the concrete pour summary; and

WHEREAS, after repeated urging on the part of the Board, the applicant submitted an acceptable color coded plan set, which shows the degree of underpinning, footing, and foundation wall completion as of the Rezoning Date, and the amount of foundation work remaining; and

WHEREAS, additionally, in a submission dated June 20, 2006, DOB submitted a photo taken by the inspector on the Rezoning Date, which appears to corroborate the photos submitted by the applicant; and

WHEREAS, the Board finds that both the color-coded map and the DOB photo support the applicant's contentions as to the degree of work completed; and

WHEREAS, however, the applicant also conceded that the initial information submitted by the contractor was not accurate, and instead submitted a revised cost estimate from a new contractor, which was based on an assessment of the foundation work done as reflected in the DOB photo and a site visit; and

WHEREAS, the Board notes that certain of the listed costs were soft costs and costs related to excavation, which the Board generally does not consider when evaluating substantial progress on foundations in an application under ZR § 11-331; rather, the Board considers those costs directly related to the foundation construction (labor, materials, etc.); and

WHEREAS, here, the cost estimate provided the cost of the concrete poured at the site; specifically, \$11,000 was expended on concrete for footings, and \$15,025 was expended on concrete for walls; and

WHEREAS, the cost estimate indicates that \$5,095 of concrete remains to be poured, which means that 83 percent of the concrete costs have been expended; and

WHEREAS, the Board finds that this is a significant outlay of expenditure, and supports the finding that substantial progress has been made on foundations; and

WHEREAS, additionally, the applicant has also submitted an affidavit from the engineer hired to review and correct the non-compliant underpinning; and

WHEREAS, this affidavit states that when the engineer inspected the site on November 9, 2005, he observed that 100 percent of the digging and excavation had been completed, 100 percent of the footings had been installed, and approximately 75 percent of the foundation walls had been completed; and

WHEREAS, finally, in the last submission, dated July 8, 2006, the applicant states that the owner estimates that 26 cubic yards of concrete had been poured, out of the 48 cubic yards needed to finish the required foundation; the Board notes that

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the financial information discussed above corroborates this estimate; and

WHEREAS, the Board has reviewed all of the submitted evidence, and agrees that it supports the conclusion that excavation was complete and substantial progress was made on foundations as of the Rezoning Date; and

WHEREAS, further, the Board finds that the evidence submitted by the applicant in response to the Board's requests sufficient and credible; and

WHEREAS, opposition to this application makes the following arguments: (1) that the developer should not be rewarded with a favorable determination on this application when violations were issued as to fencing, failure to protect adjacent properties during excavation, and underpinning; (2); that work occurred in violation of issued SWOs; and (3) that work was preformed after hours; and

WHEREAS, the Board notes at the outset that the issuance of the three above-cited violations by DOB does not automatically disqualify the owner from obtaining a renewal of the NB Permit pursuant to ZR § 11-331; and

WHEREAS, as the Board has previously determined in prior applications made under ZR § 11-331, issuance of violations during ground-up construction is quite common, and a favorable determination under this statute may still be had in spite of their issuance; and

WHEREAS, however, the Board may take into consideration violations that reflect certain construction activities that result in an improper time savings during some facet of excavation or foundation work, or work that precedes such construction, such as demolition or site preparation; and

WHEREAS, when the Board, in its discretion, determines that the violated conduct did result in a time savings, a reasonable deduction from the amount of construction completed may be made if the circumstances warrant; and

WHEREAS, the notes of the DOB inspector who issued the Protection Violation are available on DOB's computerized Building Information Systems ("BIS"); the notes state, in part "FAILURE TO PROVIDE PROTECTION AT SIDES OF EXCAVATION. NOTED APPROX 20' X 15'X 12'HIGH EXCAVATED AT AREA WITH NO BRACING OR SHORING."; and

WHEREAS, thus, it appears that there was an approximately 300 sq. ft. area on a lot of 2,000 sq. ft. that was not properly braced; and

WHEREAS, the Fence Violation is also available on BIS, and the notes read "FAILURE TO PROVIDE 8 FOOT HIGH FENCE WHERE REQUIRED DURING EXCAVATION OPERATIONS. NOTED: EXCAVATED AREA APPROX 20'X 15'X 12' HIGH WITHOUT 8' HIGH CONSTRUCTION FENCE ENCLOSING PREMISES"; and

WHEREAS, while it is unclear from the record whether there was an actual intent on the part of the owner or the contractor to gain a time advantage, the Board conservatively determines that the two violations together likely created an ability to proceed with construction more quickly than if the time had been taken to provide the fencing and shoring; and

WHEREAS, thus, in order to be conservative, the Board determines that a time deduction is reasonable; and

WHEREAS, here, the record indicates that it took three days to remedy the cited conditions; and

WHEREAS, however, if the Board deducted this amount of time from the overall construction schedule, it would not affect the determination that the technical requirements of ZR § 11-331 have been met, since the record indicates that excavation and significant underpinning and foundation work was completed approximately one to two weeks prior to the Rezoning Date; and

WHEREAS, finally, the Board observes that the Underpinning Violation reflects what appears to be a minor error in actual underpinning construction (the record indicates that the underpinning was poured three inches beyond what was set forth on the DOB-approved plans); and

WHEREAS, further, this violation does not reflect an action on the part of the contractor or owner that can be said to have resulted in a time advantage; and

WHEREAS, accordingly, the Underpinning Violation is not relevant to the Board's consideration; and

WHEREAS, the Board notes that some violations were issued to the premises after the Rezoning Date; however, these violations are also not relevant to the Board's inquiry herein, since no work performed after this date was considered by the Board; and

WHEREAS, as to the allegation that work proceeded in violation of an issued SWO, the opposition states that after the issuance of the SWO on September 22nd, work was observed at the site the next day; and

WHEREAS, however, DOB's computerized Building Information Systems ("BIS") records indicate that an inspection was conducted by DOB on that day, and that the work being performed was to remedy the conditions cited in the Protection and Fence Violations, which was permitted; and

WHEREAS, consequently, even though this work was observed by a DOB inspector, no violation was issued; and

WHEREAS, as to the allegation that work was performed after hours or on weekends, the Board again notes that BIS does not indicate that a violation was issued for this; and

WHEREAS, in fact, BIS indicates that only one complaint was made on this basis (on September 17, 2005), and that DOB inspected the site the same day and did not observe any impermissible work; and

WHEREAS, the Board understands that the community and elected officials worked diligently on the Park Slope South rezoning and that the proposed development at the site does not comply with the new R5B zoning parameters; and

WHEREAS, however, the applicant has met the requirements as set forth at ZR § 11-331, even assuming a time reduction for the Fence and Protection Violations; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant and the opposition as outlined above, as well as its consideration of the entire record, the Board finds that excavation was complete and that substantial progress had been made on the foundation, and

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additionally, that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building permit No. 301949523-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on February 8, 2007.

Adopted by the Board of Standards and Appeals, August 8, 2006.

21-06-A

APPLICANT – Walter T. Gorman, PE, for Breezy Point Cooperative Incorporated, owner; Michael & Jennifer Esposito, lessee.

SUBJECT – Application February 7, 2006 – Proposed enlargement of an existing one family dwelling located in the bed of a mapped street, (Rockaway Point Boulevard), is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 28 Rockaway Point Boulevard, a/k/a State Road, N/S 85.09' East of Beach 179th Street, Block 16340, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 30, 2006, acting on Department of Buildings Application No. 402279100, reads, in pertinent part:

“Proposal to construct a second story on a home which lies within an R4 zoning district but also lies within the bed of a mapped street (Rockaway Point Boulevard a/k/a State Road) is contrary to Article 3, Section 35 of the General City Law and must, therefore, be referred to the Board of Standards & Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated March 30, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated, June 27, 2006, the Department of Transportation states that it has reviewed he above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, January 30, 2006, acting on Department of Buildings Application No. 402279100, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received February 7, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2006.

Jeffrey Mulligan, Executive Director

Adjourned: 10:30 A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 8, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar and
Commissioner Collins.

ZONING CALENDAR

151-05-BZ

APPLICANT – The Law Office of Frederick A. Becker for
100 Varick Street, LLC, Owner.

SUBJECT – Application June 16, 2005 – Zoning Variance
(use) pursuant to Z.R. §72-21 to allow a proposed ten (10)
story residential building containing seventy-nine (79)
dwelling units located in an M1-6 district; contrary to Z.R.
§42-00.

PREMISES AFFECTED – 100 Varick Street, located on the
easterly side of Varick Street between Watts and Broome
Streets, Block 477, Lots 35 and 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker, Charles Fridman, John
Sole and Doris Diether of Community Board #2.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and
Commissioner Collins.....3

Negative:.....
0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough
Commissioner, dated May 20, 2005, acting on Department of
Buildings Application No. 103625436, reads, in pertinent part:

“Proposed residential use is contrary to ZR 42-00 in
M1-6 zoning district”; and

WHEREAS, this is an application under ZR § 72-21, to
permit, on a site within an M1-6 zoning district, an eight-story
plus cellar residential building, which is contrary to ZR § 42-00;
and

WHEREAS, the bulk parameters of the proposed building
are as follows: a total residential floor area of 52,648 sq. ft., a
total residential Floor Area Ratio (FAR) of 7.97, 78’-9” total
building height (with bulkheads), 61 residential units, and 100
percent lot coverage; no parking spaces will be provided; and

WHEREAS, additionally, no setback will be provided,
which is acceptable to both this Board and Community Board 2,
Manhattan; the Community Board recommends approval of the
application on condition that the FAR of the proposed building
be limited to 8.0; and

WHEREAS, initially, however, the applicant proposed a
10 FAR, ten-story, 109 ft. high building, with 79 dwelling units;
and

WHEREAS, for reasons discussed below, the Board did
not find that a FAR of 10.0 was justified, and required the
applicant to reduce the FAR to a level consonant with the degree
of financial hardship present at the site; and

WHEREAS, as a threshold issue, the Board notes that the
site is burdened by an Height Restriction Agreement, dated
September 3, 1981 (the “Agreement”), that benefits the property
located at 125 Varick Street (as well as another nearby
property); and

WHEREAS, this Agreement requires that any new
development on the site be limited to eighty feet above the level
of the sidewalk of Varick Street; this height limit encompasses
bulkheads and penthouses; and

WHEREAS, a representative of 125 Varick Street
appeared at hearing and argued that the Board could not hear the
application since it proposed a building form that would violate
the Agreement; and

WHEREAS, the applicant represents that the owner of the
subject premises is in the process of negotiating the termination
of the Agreement with the owner of 125 Varick Street, but that
this has not occurred yet; and

WHEREAS, accordingly, in order to comply with the
requirements of the Agreement, the Board required that a
building no higher than 80 ft. from the sidewalk be proposed;
and

WHEREAS, since the proposed building will have a
maximum total height of 78’-9” (including bulkhead), the
Agreement is not violated; and

WHEREAS, a public hearing was held on this application
on May 2, 2006, after due notice by publication in the *City
Record*, with a continued hearing on June 6, 2006, and then to
decision on July 11, 2006; and

WHEREAS, the premises and surrounding area had a site
and neighborhood examination by a committee of the Board,
consisting of Chair Srinivasan, Vice-Chair Babbar and
Commissioner Collins; and

WHEREAS, the subject premises is located on the east
side of Varick Street between Watt and Broome Streets, across
the street from the Hudson Tunnel entry plaza, and is comprised
of two separate tax lots, Lots 35 and 42; the total lot area of the
zoning lot is 6,598 sq. ft.; and

WHEREAS, Lot 35 has 4,540 sq. ft. of lot area, and is
slightly irregular in shape, with a depth ranging from 35’-0” at
its south lot line to 56’-2” at its north lot line; and

WHEREAS, Lot 42 has 2,058 sq. ft. of lot area, and is
rectangular; and

WHEREAS, the site is currently occupied by two separate
three-story buildings (formerly, the buildings were connected),
with a total floor area of 19,794 sq. ft. and an FAR of 3.0; the
buildings are proposed to be demolished; and

WHEREAS, the applicant states that the buildings were
previously used for offices, but had been only 50 percent
occupied or vacant since 1999, when the current owner took
possession, until late 2001; and

WHEREAS, in 2001, the Red Cross leased the buildings
for a five year term, but terminated the lease early in 2003; the

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applicant states that the buildings have largely been vacant since then, and that marketing of the buildings has not resulted in any new lessees aside from a temporary tenant on the ground floor; and

WHEREAS, accordingly, the owner now applies to the Board for a use variance, which would permit the construction of the proposed residential building; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the size of the site is sub-standard in terms of lot area; (2) the site is in an area with many other more viable commercial and manufacturing buildings; and (3) the existing buildings are obsolete for office or industrial, in that floor plates are narrow and the central elevator core minimized productive use of the floors; and

WHEREAS, the Board does not view the second or third cited factors to be actual bases of uniqueness; and

WHEREAS, specifically, the Board does not recognize proximity to arguably better conforming buildings as a unique physical condition, especially where, as here, the applicant has not supported this argument with proof or engaged in any substantial analysis of it; and

WHEREAS, further, as noted above, the existing buildings are proposed to be demolished; thus, any obsolescence argument is rendered moot since the developer will then have an empty, developable site; and

WHEREAS, however, the Board does view the small size of the site, and its shallow depth, as legitimate unique physical conditions; and

WHEREAS, specifically, the Board notes that these two features lead to a floor plate with a maximum usable depth of approximately 35 ft., which is inefficient and unattractive to modern office or manufacturing users, and would thus realize a minimal rent; and

WHEREAS, the applicant also notes that a commercial building would need a central core and hallways running the length of the building, which would use approximately 25 percent of the floor plates; and

WHEREAS, based upon its review of the submitted radius diagram and its site and neighborhood inspection, the Board observes that the site's size and depth is relatively unique within the area and the subject M1-6 zoning district; and

WHEREAS, specifically, the Board observes that while there are smaller lots in the area, these lots are regularly shaped and are typically occupied by lawful non-conforming dwellings, garages, or community facilities; and

WHEREAS, the Board also observes that the site is the shallowest of its size in the area; and

WHEREAS, based upon the above, the Board finds that one of the aforementioned unique physical conditions – namely, the small size and shallowness of the lot - creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following conforming scenarios: (1) the

existing commercial and office buildings; (2) a 10.0 FAR complying and conforming commercial office building, with a retail component; and

WHEREAS, the applicant concluded that neither scenario would realize a reasonable return; and

WHEREAS, however, the Board had concerns regarding certain aspects of this study, and identified them at hearing; and

WHEREAS, specifically, the Board questioned: (1) the stated land valuation; (2) the claimed overall operating costs related to the residential proposal (discussed in more detail below); and

WHEREAS, as to the land valuation, the Board initially expressed concern that it was too high, given the contours of the site and the compromised floor plates of the existing buildings; and

WHEREAS, further, the Board noted that the Agreement limited the height of any building, such that the 10.0 FAR commercial building could not be constructed; the Board asked for a refined land valuation that took this limitation into account; and

WHEREAS, in response, the applicant submitted a valuation that was reduced by 20 percent and which was based on a complying commercial structure with an FAR of 8.0; and

WHEREAS, the Board continued to question the validity of the valuation, noting that the Agreement had a more significant effect on the amount of commercial FAR that could be developed on the site, which would be reflected in the valuation; the Board again requested that the applicant provide a revised valuation; and

WHEREAS, in response, the applicant revised the land valuation to reflect a 7.0 FAR complying and conforming building, and used a formula of 7.0 FAR times the original land cost per square foot to arrive at this valuation; the applicant concludes that the 7.0 FAR scenario does not realize a reasonable return; and

WHEREAS, the Board has reviewed this revised valuation and the supporting analysis and finds it acceptable; and

WHEREAS, based upon its review of the subsequent submissions of the applicant, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area surrounding the site contains significant residential use, notwithstanding the manufacturing zoning classification; and

WHEREAS, the applicant specifically cites to lots on the subject block occupied by dwellings, as well as residential uses on Blocks 491 and 578, located to the north and west of the site; and

WHEREAS, the applicant also notes that that there is a

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ten-story multiple dwelling fronting on Varick Street on Block 477, immediately to the south of the site; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of this map and upon its site and neighborhood inspection, the Board agrees that the area is best characterized as mixed-use, and that the proposed residential use is compatible with the character of the community; and

WHEREAS, the Board also finds that the proposed amount of residential FAR (7.97) and the amount of units (61) will not have a negative effect on the character of the community or adjacent properties; and

WHEREAS, further, the Board notes that the proposed height of the building (78'-9") respects the Agreement, and is compatible with the context of the surrounding area, as illustrated by a streetscape drawing submitted by the applicant; and

WHEREAS, the Board also notes that if the Agreement was not in place, a 100 ft. high building with no more than the approved FAR (7.97) would also be compatible with the context of the surrounding area; and

WHEREAS, at hearing, the Board expressed concern about: (1) the density and the proposed size of the residential units; (2) the roof configuration and compliance with the need for a bulkhead for the stair case; and

WHEREAS, as to density and unit size, the Board seeks to ensure that the proposed building complies in each respect to a Quality Housing-type residential building that would be developed in a residential district that allows a comparable amount of FAR, such as an R9A zoning district, which allows an FAR of 7.5; and

WHEREAS, specifically, the Board asked if each proposed unit was a minimum of 400 sq. ft., as required by ZR § 28-21; and

WHEREAS, in response, the applicant's architect confirmed that the proposed dwelling units will comply with the minimum unit size parameters in effect in a residential district that allows a comparable amount of FAR; and

WHEREAS, the Board also observes that the proposed amount of units complies with the density requirements of an R9A district; and

WHEREAS, finally, the Board notes that a condition will be placed on this grant requiring compliance with Multiple Dwelling Law requirements concerning provision of light and air; and

WHEREAS, as to the roof configuration, the Board noted that the single staircase core of the proposed building requires a bulkhead, and that the proposal did not reflect a covered bulkhead for roof access; and

WHEREAS, in response, the applicant noted that the roof of the building will be sufficiently sloped that roof access is not required, so no separate covered staircase bulkhead is required, as per Building Code § 27-375; and

WHEREAS, accordingly, the Board finds that this action

will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant originally proposed a ten-story, 10.0 FAR building with 79 units; and

WHEREAS, the Board expressed its dissatisfaction with this proposal at the first hearing, given that it reflected a degree of relief not consonant with the amount of hardship on the site; the Board was also concerned that the proposed FAR was too significant for the area, given that the nearest residential district was recently rezoned to a C6-2A zoning district, which allows a residential FAR of 6.02; and

WHEREAS, the Board also noted the site valuation and operating costs problems in the initial feasibility study, as discussed above; and

WHEREAS, as to the operating costs for the proposed residential building, the Board stated that they appeared to be excessive for the amount of residential units proposed; and

WHEREAS, in response, the applicant reduced the operating costs in its subsequent analyses of variance proposals; and

WHEREAS, specifically, the lower operating cost was reflected in a 6.0 residential FAR scheme and an 8.0 FAR residential scheme, both with a height of approximately 100 ft., that the applicant submitted after the first hearing at the request of the Board; and

WHEREAS, the applicant concluded that the 6.0 scheme did not provide a reasonable return, but that the 8.0 FAR scheme did; and

WHEREAS, as noted above, the Board recognized that the 8.0 scheme was compatible with the context of the neighborhood in terms of its height; and

WHEREAS, however, this scheme proposed a building height that did not fit within the bulk form dictated by the Agreement; and

WHEREAS, additionally, both analyses suffered from the site valuation problem noted above, and the Board did not accept them for this reason; and

WHEREAS, subsequently, the applicant submitted a feasibility analysis for a 7.97 FAR residential scenario that reflected an appropriate site valuation and complied with the Agreement in terms of height; and

WHEREAS, the applicant concluded that the 7.97 FAR scenario would realize a reasonable return; and

WHEREAS, the Board has reviewed the last analysis and agrees that the 7.97 FAR scenario represents the degree of relief necessary to overcome the site's inherent hardship; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted

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action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA140M, dated April 11, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, on a site within an M1-6 zoning district, an eight-story, 73'-7" high, 7.97 FAR residential building, with 61 dwelling units and accessory residential use in the cellar, which is contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 7, 2006"—eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a total residential floor area of 52,648 sq. ft., a total residential FAR of 7.97, eight stories plus a cellar, 78'-9" total building height (with bulkheads), 61 residential units, no setback, and 100 percent lot coverage, all as illustrated on the BSA-approved plans;

THAT all units shall have at least 400 sq. ft. of floor area;

THAT all residential units shall comply with all Multiple Dwelling Law requirements as to provision of light and air;

THAT the fresh air intakes not be placed on the Varick Street side of the building

THAT the all dwelling units contain double glazed windows with good sealing properties, and air conditioning, to provide 35-dBA noise attenuation in order to ensure an acceptable interior noise environment of 45-dBA;

THAT a construction protection plan approved by the Landmarks Preservation Commission must be submitted to the Department of Buildings before the issuance of any building

permit;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2006.

182-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4 Park Avenue Associates, owner.

SUBJECT – Application August 4, 2005 – Under Z.R. §73-36 to allow the legalization of a physical culture establishment in a C5-3 zoning district.

PREMISES AFFECTED – 4 Park Avenue, between East 33rd and East 34th Streets, Block 863, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 27, 2005 acting on Department of Buildings Application No. 104098343, reads, in pertinent part:

“Proposed physical culture establishment within C5-3 zoning district is contrary to this section [ZR 32-10] hence it is not permitted.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district, the legalization of a physical culture establishment (“PCE”) located on the first, mezzanine, and second floors of an existing 21-story mixed-use building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, with continued hearings on May 2, 2006 and July 11, 2006, and then to decision on August 8, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 5, Manhattan,

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recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the conditions set forth below; and

WHEREAS, the subject site is located on the west side of Park Avenue between East 33rd and East 34th Streets; and

WHEREAS, the PCE occupies 120 sq. ft. on the first floor, 1,936 sq. ft. on the mezzanine, and 14,996 sq. ft. on the second floor, for a total PCE floor area of 17,052 sq. ft.; and

WHEREAS, the applicant represents that the PCE will offer exercise equipment and classes in aerobics, martial arts, and physical conditioning; and

WHEREAS, the applicant operates the facility as Synergy Fitness; and

WHEREAS, the proposed hours of operation for the PCE are as follows: Monday through Thursday, 5:00 a.m. to 12:00 a.m.; Friday, 8:00 a.m. to 8:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant what sound attenuation measures were in place to create a buffer between the PCE and the residential use; and

WHEREAS, the applicant responded that there are offices on the third floor, between the PCE and the residential uses on the fourth floor, and that this provides a sufficient sound buffer; and

WHEREAS, additionally, the Board asked the applicant whether the entire facility was handicapped-accessible; and

WHEREAS, the applicant modified the plans to incorporate a handicapped-accessible lift to the mezzanine level; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.06-BSA-009M, dated January 25, 2006; and

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district, the continued operation of a physical culture establishment located within an existing 21-story mixed-use building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 25, 2006"-(4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on August 8, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday, 5:00 a.m. to 12:00 a.m.; Friday, 8:00 a.m. to 8:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.;

THAT the above conditions shall appear on the certificate of occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all signage shall comply with C5-3 zoning district regulations;

THAT all fire protection measures, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the DOB;

THAT sound attenuation shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of

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plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
August 8, 2006.

303-05-BZ

APPLICANT – Eric Palatnik, P.C., for Adoo East 102 Street Corp., owner; Aspen Fitness, lessee.

SUBJECT – Application October 12, 2005 – under Z.R. §72-21 to permit the legalization of the second floor of an existing two story commercial structure for use as a physical culture establishment. Premises is located within the R8-B zoning district.

PREMISES AFFECTED – 428 East 75th Street, between York and First Avenues, Block 1469, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 20, 2005, acting on Department of Buildings Application No. 104086775, reads, in pertinent part:

“The proposed 2nd floor plan is designed and arranged as a Physical Culture Establishment as per Sec 12.10 ZR definitions and is not permitted in a residential zoning district as per 22-00 (ZR).”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8B zoning district, the legalization of a physical culture establishment (“PCE”) located on the second floor of an existing two-story commercial structure, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on June 6, 2006 after due notice by publication in *The City Record*, with continued hearing on July 11, 2006, and then to decision on August 8, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject building is located on the south side of East 75th Street between First and York Avenues; and

WHEREAS, the existing PCE occupies a total of 3,469 sq. ft. on the second floor of the existing two-story legal non-conforming commercial building; and

WHEREAS, the PCE is operated as Aspen Fitness; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties

and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) the history of development at the site; and (2) the functional obsolescence of the building; and

WHEREAS, the applicant represents that the building was designed as a commercial/manufacturing structure in the late 19th Century and has been continuously used in that capacity; and

WHEREAS, the applicant represents that the uses at the site have included a manufacturing/warehouse establishment and automobile repairs; and

WHEREAS, the applicant notes that the history of intense commercial and manufacturing uses at the site, particularly on the first floor, did not create an ability to place residential use on the second floor; and

WHEREAS, moreover, the applicant notes that residential use would not be permitted as of right because the maximum permitted lot coverage is exceeded and there is insufficient access to light and air; and

WHEREAS, additionally, the applicant represents that since the building was constructed as a wood-framed garage, it cannot take additional floor loads; thus, adaptive re-use is impractical; and

WHEREAS, the Board notes that the first floor is currently occupied by legal non-conforming commercial uses, including a veterinary office; and

WHEREAS, as to the functional obsolescence for commercial purposes, the applicant represents that the lack of a freight elevator impedes permitted commercial use on the second floor; and

WHEREAS, additionally, the small floor plates and lack of a lobby and security make office use impractical; and

WHEREAS, based on the above, the Board finds that there are unique physical conditions inherent to the site, and the absence of the building, which was developed as a commercial building, create an unnecessary hardship in conforming strictly with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that developing the building with a legal non-conforming commercial use would not yield the owner a reasonable return; and

WHEREAS, the Board observes that without the variance, such space would not provide a reasonable return, given its lack of desirability for other as of right commercial uses because of its location and configuration; and

WHEREAS, additionally, the site is under built and income must be derived from both floors in order to obtain a reasonable return; and

WHEREAS, accordingly, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood, impair appropriate use or development of adjacent property or

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be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding mid-block area is occupied by six and seven-story multiple dwellings, and that the existing PCE, since it is low intensity, is compatible with these residential uses; and

WHEREAS, additionally, the applicant represents that there is a long history of commercial and automotive uses on the block, a number of which remain; and

WHEREAS, the Board notes that no changes will be made to the exterior of the building; and

WHEREAS, the hours of operation for the PCE are 6:00 a.m. to 9:00 p.m., Monday through Friday; and 8:00 a.m. to 3:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant has installed sound attenuated double-glazed windows to minimize impacts on adjacent residential uses; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the Board notes that although a variance is being requested, the subject application meets all the requirements of the special permit for a PCE, except for the required zoning district; and

WHEREAS, specifically, the PCE contains facilities for classes, instruction and programs for physical improvement, bodybuilding, weight reduction and aerobics; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR 06-BSA-024M, dated Feb, 22, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.4, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit the legalization of a physical culture establishment located on the second floor of an existing two-story commercial building within an R8B zoning district, contrary to ZR § 22-00; *on condition* that all work shall substantially conform to drawings, filed with this application marked "Received July 17, 2006"-(1) sheet and "August 7, 2006"-(1) sheet; and *on further condition*:

THAT the term of this variance will be ten years from August 8, 2006, to expire on August 8, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 6:00 a.m. to 9:00 p.m., Monday through Friday; and 8:00 a.m. to 3:00 p.m., Saturday and Sunday;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all fire protection measures indicated on the BSA-approved plans shall be installed and maintained, as approved by DOB;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2006.

22-06-BZ

APPLICANT – Harold Weinberg, P.E., for Margret Riordan, owner.

SUBJECT – Application February 9, 2006 – under Z.R. §72-21 to permit the enlargement of an existing single family dwelling on a pre-existing undersized lot. The proposed enlargement increases the degree of non-compliance at the front yard, rear yard and side yards; (Z.R. §23-45, §23-47 and

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§23-48) the proposed enlargement also exceeds the allowable setback and is contrary to Z.R. §23-631. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 8 Gotham Avenue, between Fane Court, south side and Shell Bank Creek, Block 8883, Lot 978, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

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THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 8, 2006, acting on Department of Buildings Application No. 301961553, reads, in pertinent part:

1. The proposed enlargement of an existing one family residence in an R4 zoning district has less than the required front yard and is contrary to Section 23-45 and also increases the degree of non-compliance which is contrary to Section 54-32 ZR. The deficient front yard also exceeds the allowable setback and is contrary to Section 23-631.
2. The proposed enlargement of an existing one family residence in an R4 zoning district has less than the required rear yard and is contrary to Section 23-47 and also increases the degree of non-compliance which is contrary to Section 54-32 ZR.
3. The proposed enlargement of an existing one family residence in an R4 zoning district has less than the minimum required side yard and is contrary to Section 23-48 and also increases the degree of non-compliance which is contrary to Section 54-32 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the proposed enlargement of an existing single-family residence that does not provide the required front yard, setback, rear yard, and side yard, and increases the degree of non-compliance of the yards, contrary to ZR §§ 23-45, 23-631, 23-47, 23-48 and 54-32; and

WHEREAS, a public hearing was held on this application on June 6, 2006 after due notice by publication in *The City Record*, with a continued hearing on July 11, 2006, and then to decision on August 8, 2006; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins; and

WHEREAS, the site is located on the south side of Gotham Avenue, 624 ft. west of the intersection of Gotham and Fane Court South; and

WHEREAS, the site is a 1,680 sq. ft. lot, 24 ft. in width by 70 ft. in depth; and

WHEREAS, the existing single-family dwelling is a one-and-two-story structure with a complying total floor area of 1,056.4 sq. ft. (1,512 sq. ft. is permitted), a complying Floor Area Ratio (FAR) of 0.62 (0.9 is permitted pursuant to the ZR provisions concerning predominantly built up areas), a non-complying front yard and front setback of 9’-3” (10 ft. is required), one non-complying side yard of 3’-11” (five ft. is required), another complying side yard of 5’-2”, and a non-complying rear yard of 12’-6” (30 ft. is required); and

WHEREAS, the wall height is 23 ft. (25 ft. is the maximum permitted) and the total height is 28 ft. (35 ft. is the maximum permitted); and

WHEREAS, the applicant proposes a small enlargement to be built atop the existing first floor in front and in back of the existing second floor, such that all of the yard dimensions will remain the same at the second floor level; and

WHEREAS, the building as enlarged will have an FAR of 0.81 and a floor area of 1365.7 sq. ft., which will still comply with applicable R4 district requirements; additionally, the wall and total heights will remain the same; and

WHEREAS, however, any enlargement must comply with the above-mentioned zoning parameters as to yards and setbacks; additionally, any increase in the non-complying conditions violates ZR § 54-31; and

WHEREAS, while the existing house is within an area where a home enlargement special permit is allowed pursuant to ZR § 73-622, the applicant states that any enlargement pursued under such special permit would have to setback 10 feet from the front lot line and 30 feet from the rear lot line, thereby creating a very limited second floor enlargement that would not use available floor area; thus, the instant variance application was filed; and

WHEREAS, the Board also observes that the special permit would not allow any front yard non-compliance, and due to the shallowness of the lot, the rear yard waiver that is permissible under the special permit would not be available; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties in developing the subject site in compliance with underlying district regulations: the site is improved upon with an existing under-built and obsolete home, and is also narrow and shallow; and

WHEREAS, specifically, the applicant notes that the size of the home, at 1,056.4 sq. ft., is particularly small, and that this amount of floor area is significantly less than permitted; and

WHEREAS, the applicant also observes that the lot is very narrow, such that an enlargement that complies with applicable side yard regulations would result in a second floor that is also very narrow; and

WHEREAS, further, because of the lot’s shallowness, no complying enlargement at the rear of the lot is possible, which

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means that any enlargement would be very limited in size and would not utilize available floor area; and

WHEREAS, finally, the applicant contends that not only is an as of right enlargement not viable, but that the construction of such an enlargement is cost-prohibitive since new structural elements would be needed in order to transfer the load of the second story to the existing foundation system; and

WHEREAS, the Board has reviewed the statements of the applicant and agrees that the cited conditions create a practical difficulty in proceeding with an as of right enlargement of the subject under-sized and obsolete home, which would effectively use available floor area; and

WHEREAS, as to uniqueness, the Board notes that the lot width and depth appear to be typical conditions on Gotham Avenue; thus, the Board asked that the applicant address the difference between the subject lot and others in the area; and

WHEREAS, in response, the applicant submitted an analysis of area homes, particularly ones along Gotham Avenue, and concluded that the subject lot is one of the few that is both narrow, shallow, and developed with a significantly under-built home; and

WHEREAS, additionally, the Board observes that upon an examination of a broader area, it becomes apparent that a significant section of the south side of Gotham Avenue on the subject block suffers from narrower and shallower lots than other streets; thus, it does not reflect an area-wide condition in the larger context of the Gerritsen Beach neighborhood; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in enlarging the existing home in strict compliance with applicable R4 zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable enlarged home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the rear portion of the proposed addition to the second floor will match up with the existing first floor rear wall line, and would generally not be observable from the street; and

WHEREAS, the applicant also states that the front portion of the addition would be compatible with existing conditions along the south side of Gotham Avenue; and

WHEREAS, the Board agrees that the proposed enlargement is minor, as it continues pre-existing non-complying conditions and does not result in a floor area or height non-compliance; and

WHEREAS, the Board notes that the home as enlarged will match up with the attached homes to the east, in terms of front yard and setback at the second floor level; and

WHEREAS, the Board also notes that the perimeter wall height and total height will remain the same; and

WHEREAS, finally, at the request of the Board, the applicant submitted a streetscape, which further reinforces the

contention that the home as enlarged will be compatible with the adjacent homes; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, further, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, within an R4 zoning district, the proposed enlargement of an existing single-family residence that does not provide the required front yard, setback, rear yard, and side yard, and increases the degree of non-compliance of the yards, contrary to ZR §§ 23-45, 23-631, 23-47, 23-48 and 54-32; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 13, 2006"—(9) sheets; and *on further condition*:

THAT the attic shall be used for accessory storage only;

THAT the above condition shall appear on the certificate of occupancy;

THAT the parameters of the proposed building shall be as follows: an FAR of 0.81; a floor area of 1,365.7 sq. ft.; a front yard and front setback of 9'-3"; one side yard of 3'-11"; another side yard of 5'-2"; a rear yard of 12'-6"; a wall height of 23 ft.; and a total height of 28 ft.; and

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable floor area in the attic;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2006.

44-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Philip & Laura Tuffnell, owners.

SUBJECT – Application March 14, 2006 – Pursuant to ZR §72-21 Variance for the vertical enlargement of an existing

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single family residence which exceeds the maximum permitted floor area, ZR §23-141 and does not provide the required side yard, §23-461.

PREMISES AFFECTED – 150-24 18th Avenue, South side of 18th Avenue, 215 east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 16, 2006, acting on Department of Buildings Application No. 402282123, reads, in pertinent part:

- “1. Proposed enlargement of an existing non-complying one-family dwelling, without the required side yard is contrary to 54-31 and 23-461 ZR. Note: Existing exterior wall is greater than 6” from lot line and cannot be considered as lot line wall.”
2. Proposed enlargement of one-family dwelling, which will exceed permitted floor area ratio, is contrary to Section 23-141 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side yards and floor area, contrary to ZR §§ 23-141, 23-461, and 54-31; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the site is located on the south side of 18th Avenue, 215 feet east of 150th Street; and

WHEREAS, the site is 20 ft. in width and 100 ft. in depth, with a total lot area of 2,000 sq. ft.; and

WHEREAS, the site is currently improved upon with a 728 sq. ft. one-story with cellar single-family home; and

WHEREAS, the applicant represents that available records indicate that the existing structure was constructed in 1931; and

WHEREAS, on December 15, 1961, the site was mapped within an R3-1 zoning district, but on December 21, 2005, the area was rezoned to R3A; and

WHEREAS, the applicant proposes to add a second story to the existing one-story house; and

WHEREAS, this addition will increase the floor area from 728 sq. ft. (0.36 FAR) to 1,320 sq. ft. (FAR of 0.66); the maximum floor area permitted is 1,200 sq. ft. (FAR of 0.60);

and

WHEREAS, the proposed enlargement will maintain the two non-complying 0’-11” side yards (one side yard of 8’-0” is required); and

WHEREAS, the enlargement will maintain the complying front yard of 12’-0” (a minimum front yard of 10’-0” is required) and rear yard of 48’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, although the side yards will remain the same, the proposed enlargement will increase the degree of non-compliance because the encroachments will be within the non-complying yards; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the narrow width of the site and (2) the existing non-complying side yards; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which showed that out of approximately 116 lots within the radius, only four are 20 feet wide and the subject site is the only one with a width of 20 ft. within the R3A zoning district; and

WHEREAS, the Board notes that the majority of lots within the radius diagram have widths greater than 30 ft.; and

WHEREAS, the applicant notes that the two existing 0’-11” side yards create additional obstacles to constructing an enlargement in compliance with relevant zoning regulations in that a complying enlargement would be 12 ft. in width, so narrow that it would be unusable; and

WHEREAS, the Board finds that the aforementioned unique physical conditions create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that a complying enlargement using available floor area would be habitable; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the bulk of the proposed building is consistent with the surrounding one- and two-family two-story residences; and

WHEREAS, the applicant notes that the existing home has an attic, and, therefore the addition of a second floor will only increase the height by four feet, from 21’-0” to 25’-0”;

and

WHEREAS, the Board notes that the proposed height is within the permitted parameters of the zoning district; and

WHEREAS, moreover, the Board notes that the requested FAR increase to 0.66, ten percent more than the district allows, is within the guidelines of ZR § 73-621, a special permit that would allow a ten percent increase in floor area; and

WHEREAS, however, the special permit does not allow development within non-complying side yards; and

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WHEREAS, further, the applicant asserts that any impact is minimized because the non-complying side yards already exist and there is a driveway to the west of the home which provides open space; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side yards and floor area, contrary to ZR §§ 23-141, 23-461, and 54-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 7, 2006"– (4) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.66; a floor area of 1,320 sq. ft.; two side yards of 0'-11"; a front yard of 12'-0"; and a rear yard of 48'-0";

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2006.

74-06-BZ

APPLICANT – Sheldon Lobel, P.C., for William Guarinello, owner.

SUBJECT – Application April 24, 2006 – Special Permit pursuant to ZR §73-622 for the enlargement of single family residence which exceeds the allowable floor area ratio, lot

coverage and open space as per ZR §32-141, less than the minimum side yards as per ZR §23-461 and less than minimum rear yard as per ZR §34-47. This special permit application also purposes to convert from a one family residence to a two family residence.

PREMISES AFFECTED – 1416 80th Street, south side of 80th Street, Block 6281, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 29, 2006 acting on Department of Buildings Application No. 302088194, reads, in pertinent part:

- “1. (23-145) Show compliance with ZR 23-145, proposed floor area seems to exceed maximum permitted.
2. (23-141) Show compliance with ZR 23-141, maximum permitted lot coverage and minimum required open space seems to exceed maximum/minimum permitted.
3. (23-461) Show compliance with ZR 23-461, minimum required side yards to total 13' between the two sides.
4. (23-461) Show compliance with ZR 23-47, 30' minimum rear yard.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-145, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, the subject lot is located on the south side of 80th Street, approximately 120 feet east of 14th Avenue; and

WHEREAS, the subject lot has a total lot area of 2,633 sq. ft., and is occupied by a 1,230 sq. ft. (0.47 FAR) lawful two-family dwelling (illegally converted to a single-family, as discussed below); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, at hearing, the Board asked the applicant if

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the proposal for the enlargement included a request for a conversion from a single-family to two-family; and

WHEREAS, the Board noted that ZR § 73-622 does not allow it to authorize such conversion; and

WHEREAS, the applicant replied that the home was a legal two-family and that there was no request for a conversion; and

WHEREAS, the applicant submitted evidence into the record that indicates that the home is a legal two-family home, including DOB and Department of Finance records; and

WHEREAS, the applicant also submitted affidavits from neighbors, the owner, and a contractor who performed work on the house, all attesting to the existence of a two-family home at the site prior to its purchase in 1965; and

WHEREAS, the applicant represents that the dwelling was illegally converted to a one-family dwelling but would be used as a two-family home subsequent to this grant; and

WHEREAS, upon review of the submitted evidence, the Board has determined that the subject dwelling is legally a two-family residence and the applicant's request comports with the requirements of the subject special permit; and

WHEREAS, the applicant seeks an increase in the floor area from 1,230 sq. ft. (0.47 FAR) to 2,336 sq. ft. (0.89 FAR); the maximum floor area permitted is 1,972.5 sq. ft. (0.75 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 26 percent to 44 percent (the maximum permitted lot coverage is 45 percent) and reduce the open space ratio from 74 percent to 56 percent (the minimum required open space is ratio is 45 percent); and

WHEREAS, the proposed enlargement will reduce the rear yard from 46'-0" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the enlargement will maintain the existing non-complying side yards of 4'-0" each (side yards totaling 13'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, the enlargement will maintain the complying 23'-0" front yard (a minimum front yard of 10'-0" is required); and

WHEREAS, also, the complying total height of 24'-0" and perimeter height of 19'-6" will be maintained; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-145, 23-45, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 14, 2006" – (11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,336 sq. ft., a total FAR of 0.89, a perimeter wall height of 19'-6", and a total height of 24'-0", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled SK9-SK18, stamped July 14, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2006.

76-06-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 150 East 58th Street, LLC/Vornado Realty, owner; Sitaras Fitness, LLC, lessee.

SUBJECT – Application April 26, 2006 – Special Permit under Z.R. §73-36 – Proposed physical cultural establishment

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to be located on a portion of the 11th and 12th floor of a thirty-nine story commercial building. Premises is located within an C5-2 Zoning District.

PREMISES AFFECTED – 150 East 58th Street, south side of East 58th Street, 85 feet east of the corner formed by the intersection of Lexington Avenue and East 58th Street, Block 1312, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Lori Cuisinier.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 18, 2006, acting on Department of Buildings Application No. 104392471, reads, in pertinent part:

“The proposed Physical Culture Establishment use on a portion of the 11th and 12th floors of the building in a C5-2 zoning district is not permitted pursuant to Section 32-10 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-2 zoning district, the establishment of a physical culture establishment (“PCE”) located on portions of the 11th and 12th floors of an existing commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the south side of East 58th Street, 85 feet east of Lexington Avenue; and

WHEREAS, the proposed PCE will occupy a total of 5,274 sq. ft. of floor area, with 3,458 sq. ft. on the 11th floor and 1,816 sq. ft. on the 12th floor, within the 39-story portion of the building; and

WHEREAS, the applicant represents that the PCE, to be operated as Sitaras Fitness, will offer physical training programs; and

WHEREAS, the PCE will have the following hours of operation: Monday through Friday, 6:00 a.m. to 8:00 p.m., and Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the establishment of the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06-BSA-079M, dated May 26, 2006 and;

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-2 zoning district, the establishment of a PCE located on portions of the 11th and 12th floors of an existing commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially

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conform to drawings filed with this application marked "Received July 24, 2006"--(4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on August 8, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Friday, 6:00 a.m. to 8:00 p.m., and Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; and

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2006.

334-04-BZ

APPLICANT – Sheldon Lobel, P.C., for L & L Realty, owner. Great Roosevelt Plaza Corporation, lessee.

SUBJECT – Application October 8, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a seven-story mixed-use building containing retail, general office and community facility space. No parking will be provided. The site is currently occupied by two commercial buildings which will be demolished as part loading of the proposed action. The site is located is located in a C4-2 zoning district. The proposal is contrary to Z.R. §36-21 (Required parking), §36-62 (Required loading berth), and §33-432(Sky exposure plane and setback requirements).

PREMISES AFFECTED – 135-28 Roosevelt Avenue, Roosevelt Avenue between Prince Street and Main Street. Block 5036, Lots 26(fka 25/26), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for adjourned hearing.

175-05-BZ

APPLICANT – Eric Palatnik, P.C. for 18-24 Luquer Street Realty LLC, owner.

SUBJECT – Application July 28, 2005 – Zoning variance

pursuant to Z.R. §72-21 to allow the construction of a proposed four (4) story multi-family dwelling containing sixteen (16) dwelling units and eight (8) accessory parking spaces. Project site is located in an M1-1 zoning district and is contrary to Z.R. §42-00.

PREMISES AFFECTED – 18-24 Luquer Street, Between Hicks Street and Columbia Street, Block 520, Lot 13,16, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik, Robert Pauls and John Chaskopoulos.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

338-05-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.

SUBJECT – Application November 25, 2005 – Special Permit Z.R. §73-622 to permit the proposed enlargement of an existing single family home which creates non-compliances with respect to open space and floor area, Z.R. §23-141, less than the required side yards, Z.R. § 23-461 and less than the required rear yard, Z.R. §23-47.

PREMISES AFFECTED – 2224 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7374, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik, Phil Harris and Seymour Esses.

For Opposition: Marilyn Schan and Robin Schan.

ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for continued hearing.

16-06-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.

SUBJECT – Application January 27, 2006 – Special Permit Z.R. § 73-622 to permit the proposed enlargement of a one family home, which creates non-compliances with respect to open space and floor area (Z.R. § 23-141), side yards (Z.R. § 23-461) and rear yard (Z.R. § 23-47).

PREMISES AFFECTED – 2253 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7375, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik, Phil Harris and Seymour Esses.

For Opposition: Marilyn Schan and Robin Schan.

ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for continued hearing.

369-05-BZ

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APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.

SUBJECT – Application December 22, 2005 – Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to Z.R. §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik, Robert E. Englert, Sean Sweeney, CB #1, Rocco Defelippis, Joe Lione, Robert Pauls. For Opposition: Vincent DiGesù, Phyllis Savarese and Robert Savarese.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application December 28, 2005 – Pursuant to Z.R. 73-44 Special Permit to permit the proposed retail, community facility & office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking & is contrary to ZR Sec. 36-21.

PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug. For Opposition: Earle Tolkmán.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

40-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Ten Hanover LLC c/o The Witkoff Group, owner; Plus One Holding Incorporated, lessee.

SUBJECT – Application March 8, 2006 – Special Permit pursuant to Z.R. § 73-36 to allow the operation of a Physical Culture Establishment (PCE) on the cellar and sub-cellar levels in a 21-story mixed-use building. The PCE membership will be limited to employees of Goldman Sachs and residents of the subject premises in a space formerly occupied and used as an accessory PCE (1998 to 2004) for members of Goldman Sachs. The premises is located in a C5-5 (LM) zoning district. The proposal requests a waiver of Z.R. Section 32-00 (Use Regulations).

PREMISES AFFECTED – 10 Hanover Square, easterly block front of Hanover Square between Water Street and Pearl Street, Block 31, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

66-06-BZ

APPLICANT – Slater & Beckerman, LLP, for Vaughn College of Aeronautics and Technology, owner.

SUBJECT – Application April 13, 2006 – Zoning variance pursuant Z.R. § 72-21 – Application is filed by the Vaughn College of Aeronautics and Technology and seeks a variance to permit the construction of a new three story college dormitory that does not conform to the use regulations of the M1-1 zoning district.

PREMISES AFFECTED – 22-40 90th Street, east side of 90th Street the corner formed by the intersection of 23rd Avenue, Block 1064, Lot 100, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carole Slater, Donald Elliott, Dr. John Fitz-Patrick, and Kurt Vichinsky.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 5:30 P.M.

BULLETIN

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SATISH BABBAR, *Vice-Chair*

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New Case Filed Up to August 15, 2006

169-06-A

175 Oceanside Avenue, 35.16 X 114.24 (0'-0" from intersection of B.211 Street and Oceanside Avenue.), Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. Appeals-To demolish existing building lying partially in the bed of a mapped street and repalce with a new building partially in the bed of a mapped street which is contrary to General City Law 35.

170-06-A

3546 Ely Avenue, North of Boston Road, Block 4892, Lot 24, Borough of **Bronx, Community Board: 12**. Appeals-To permit the two proposed developments which rest within the bed of a mapped but unbuilt street (Needham Avenue).

171-06-A

3548 Ely Avenue, North of Boston Road, Block 4892, Lot 25, Borough of **Bronx, Community Board: 12**. Appeal-To permit the two proposed developments which rest within the bed of a mapped but unbuilt stret (Needham Avenue).

172-06-A

157-05 20th Avenue, Southern side of 20th Avenue, east of Clintonville Street., Block 4750, Lot 10, Borough of **Queens, Community Board: 7**. General City Law Section 35-To permit the proposed development which rests in the mapped but unbuilt portions of 20th Avenue and 157th Street.

173-06-A

240-28 128th Avenue, Southwest corner 128th Avenue and Hook Creek Boulevard, Block 12857, Lot 32, Borough of **Queens, Community Board: 13**. Appeal-to permit the proposed development which rests partially within the bed of a mapped but unbuilt street.

174-06-A

22-44 119th Street, North west corner of 23rd Avenue and 119th Street., Block 4194, Lot 20, Borough of **Queens, Community Board: 7**. General City Law Section 35, Article 3-To permit construction in the bed of a final mapped street (119th Street).

175-06-BZ

1653/9 Richmond Road, West side of Richmond Road, 417.06 feet south of intersection with Four Corners Road., Block 883, Lot (tent 27), Borough of **Staten Island, Community Board: 2**. (SPECIAL PERMIT)73-243,73-44-Proposed eating and drinking establishment with accessory drive-through facility and proposed to reduce required accessory parking for UG 6 (B-1) uses.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

SEPTEMBER 26, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 26, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

933-28-BZII

APPLICANT – Michael M. Robbins, R.A., A.I.A., P.C., for Roger Budhu, owner.

SUBJECT – Application September 12, 2005 - Pursuant to ZR 11-411 for the extension of term/waiver of an automotive service station with auto repairs which expired on October 29, 2004, and an amendment to legalize a portion of the building to an accessory convenience store. The premise is located in an R-5 zoning district.

PREMISES AFFECTED – 125-24 Metropolitan Avenue, southwest corner of 126th Street and Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

229-84-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, for High Definition Realty, LLC, owner; Bally Total Fitness Corp., lessee.

SUBJECT – Application June 30, 2006 - Extension of Term/Waiver for a previously approved Physical Culture Establishment, located in an M1-1 zoning district, which was granted under section 73-36 of the zoning resolution and expired on November 27, 2004.

PREMISES AFFECTED – 75-28 Queens Boulevard, southside between Kneeland and Jacobus Streets, Block 2450, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

286-05-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Ezra G. Levin, owner.

SUBJECT – September 14, 2006 - Proposed reconstruction and alteration of an existing building located in the bed of a mapped street (Sycamore Avenue) is contrary to General City Law Section 35. Premises is located within the R1-2 Zoning District.

PREMISES AFFECTED – 5260 Sycamore Avenue, east side of Sycamore between West 252nd Street and West 254th Street, Block 5939, Lot 380, Borough of The Bronx.

COMMUNITY BOARD #8BX

61-06-A

APPLICANT – Miro C. Stracar, P.E., for Breezy Point

Cooperative, Inc., owner; Mrs. Allie Hagen, lessee.

SUBJECT – Application April 5, 2006 – Proposed reconstruction and enlargement of an existing one family home located within the bed of a mapped street which is contrary to General City Law Section 35. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 152 Ocean Avenue, westerly side of Ocean Avenue, block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

85-06-BZY

APPLICANT – Sanford Solny, for Menachem Realty, Inc., owner.

SUBJECT – Application May 5, 2006 - Proposed extension of time to complete construction of a minor development pursuant to ZR 11-331 for a mixed use building under the prior R6 zoning district. New zoning district is R4-1.

PREMISES AFFECTED – 1623 Avenue P, northwest corner of Avenue P and East 17th Street, Block 6763, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

92-06-A

APPLICANT – Vito J. Fossella, P.E., for Norris Heath, owner.

SUBJECT – Application May 9, 2006 - Proposed construction of a two story/two family detached not fronting on a mapped street contrary to General City Law Section 36. Premises is located within R3A Zoning District.

PREMISES AFFECTED – 5 Lockman Place, Block 1236, Lot 122 (tentative), Borough of Staten Island.

COMMUNITY BOARD #1SI

164-06-A

APPLICANT – Cozen O'Connor Attorneys, for Elba and Jeanette Bozzo, owners.

SUBJECT – Application July 26, 2006 - Appeal filed to challenging the Order of Closure issued by the Department of Buildings on June 30, 2006 pursuant to Administrative Code Section 26-127.2 regarding the use of the basement, first, second and third floor of the subject premises which constitutes an illegal commercial use in a residential district.

PREMISES AFFECTED – 148 East 63rd Street, south side of East 63rd Street, 120' east of Park Avenue, Block 1397, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #8M

SEPTEMBER 26, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 19, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

CALENDAR

ZONING CALENDAR

50-06-BZ

APPLICANT– Jeffrey A. Chester, Esq., for 461 Carool Strait, LLC, owner.

SUBJECT – Application March 20, 2006 – Use Variance pursuant to Z.R.§72-21 to permit the conversion and expansion of a commercial/industrial building to a two-family residence. The premise is located in a M1-2 zoning district. The waiver requested relates to the use regulations pursuant to Z.R. Section 42-00. The subject site was previously used by Linda Tool Co., a custom tool and dye manufacturer which occupied the premises for several decades.

PREMISES AFFECTED – 461 Carroll Street, between Nevins Street and Third Avenue, Block 447, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #6BK

112-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Audubon Housing Dev. Fund Corp., owner.

SUBJECT – Application June 5, 2006 – Variance application pursuant to Z.R. Section 72-21 to permit the construction of a seven-story and cellar residential and commercial building with accessory supportive social services. The accessory supporting social services programs and commercial component will be located on the first floor. The residential component will be located on floors 1 through 7. The Premises is located in an M1-4 zoning district. The site was most recently used for automobile sales and storage. The proposal seeks to vary, based on the nearby R7-1 zoning district, Z.R. Sections 23-142 (Residential Floor Area), 24-111 (Total Floor Area), 23-142 (Open Space), 23-22 (Number of Dwelling Units), and 23-632 (for Wall Height, Total Height, Setbacks, Sky Exposure Plane, and Number of Parking Spaces).

PREMISES AFFECTED – 507 East 176th Street, northwest corner of Third Avenue and 176th Street, Block 2924, Lots 38, 39, 42, Borough of The Bronx.

COMMUNITY BOARD # 6BX

149-06-BZ

APPLICANT – Sheldon Lobel, P.C., for NYC Department of Citywide Admin. Services, owner; Boro Park Volunteers of Hatzolah, Inc., lessee.

SUBJECT – Application July 7, 2006 - Variance pursuant to Z.R. Section 72-21 to permit the development of the site to accommodate a not-for-profit ambulance/emergency vehicle garage, dispatch, and training facility. The premise is located in an M2-1 zoning district. The proposal is requesting

variance waivers relating to floor area (Z.R. Section 43-12 and the number of parking spaces (Z.R. Section 44-21.

PREMISES AFFECTED – 3701 14th Avenue, southwest corner of the intersection formed by 14th Avenue and 37th Street, Block 5348, Lot 9 (portion), Borough of Brooklyn.

COMMUNITY BOARD #12BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 15, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, June 7, 2006, as printed in the bulletin of June 16, 2006, Vol. 91, Nos. 23 & 24. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

106-76-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Amerada Hess Corp., owner.

SUBJECT – Application May 2, 2006 – Pursuant to ZR 72-01 to reopen and amend the BSA resolution to construct a new one story accessory convenience store, replace the existing metal canopy, pumps and pump islands and to remove two curb cuts and replace with one curb cut. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 129-15 North Conduit Avenue, northeast corner of 129th Street, Block 11863, Lot 12, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a reopening and an amendment to a previously granted variance, to permit the construction of an accessory convenience store and to permit other modifications to an existing gasoline service station; and

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in *The City Record*, and then to decision on August 15, 2006; and

WHEREAS, on July 20, 1976, the Board granted an application, pursuant to ZR §72-21, to permit the construction and maintenance of a gasoline service station with an accessory convenience store and accessory parking in an R3-2 zoning district; and

WHEREAS, subsequently, at various times, the grant was amended and extended; and

WHEREAS, most recently, on January 7, 2003, the grant

was amended to permit the addition of a one-story convenience store, new fuel dispensers, a new canopy, and a change in the curb cuts and was extended for a ten-year term to expire on July 10, 2011; and

WHEREAS, the Board notes that the convenience store was never constructed; and

WHEREAS, the applicant now seeks to proceed with the construction of a convenience store with modest changes to the interior layout, and also seeks to replace the existing metal canopy, pumps and pump islands, remove one curb cut, and relocate a second curb cut; and

WHEREAS, at hearing, the Board asked if the applicant could provide 100 percent opaque, six-foot tall fence along the rear of the site; and

WHEREAS, the applicant agreed to install such fencing; and

WHEREAS, based upon its review of the evidence, the Board finds it appropriate to approve the proposed amendment.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on July 20, 1976, so that as amended this portion of the resolution shall read: “to permit the construction of an accessory convenience store, the replacement of the existing metal canopy, pumps and pump islands, the removal of one curb cut and the relocation of another; *on condition* that all work shall substantially conform to drawings filed with this application and marked ‘Received August 1, 2006’-(6) sheets and ‘August 10, 2006’-(1) sheet; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 401504412)

Adopted by the Board of Standards and Appeals, August 15, 2006.

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application April 12, 2006 – Pursuant to ZR §72-01 for the Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for the construction of a two story building for commercial use (Retail UG6) in a residential use district.

PREMISES AFFECTED – 70 East 184th Street, a/k/a 2363 Morris Avenue, south side of East 184th Street, corner formed by the intersection of Morris Avenue, Block 3183, Lot 42,

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Borough of The Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Mothiur Rahman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a two-story commercial building permitted by a prior grant, which expired on April 13, 2006; and

WHEREAS, a public hearing was held on this application on June 13, 2006, after due notice by publication in the *City Record*, with continued hearings to July 18, 2006, and then to decision on August 15, 2006; and

WHEREAS, on January 11, 2000, under the subject calendar number, the Board granted a variance application to permit the construction of a two-story commercial building (UG 6) in an R8 zoning district; and

WHEREAS, on April 13, 2004, the Board reopened and amended the resolution to permit an extension of time to complete construction and obtain a certificate of occupancy, which expired on April 13, 2006; and

WHEREAS, the applicant states that the reason for the requested extension of time is that construction has not commenced due to financing issues; and

WHEREAS, at hearing, the Board asked the applicant how much time would be required to complete construction; and

WHEREAS, the applicant responded that construction could begin immediately and be completed in two years; and

WHEREAS, the Board has determined that the evidence in the record supports the grant of the requested extension.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on January 11, 2000, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction, for a period of two years from the date of this resolution to expire on August 15, 2008; *on condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 200483422)

Adopted by the Board of Standards and Appeals,

August 15, 2006.

291-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Torah Academy High School, owner.

SUBJECT – Application May 9, 2006 – Extension of Time to complete construction of a Special Permit, Use Group 3 for a yeshiva (Torah Academy High School) which expired on April 9, 2006. The premise is located in an C8-2 zoning district.

PREMISES AFFECTED – 2316-2324 Coney Island Avenue, Block 7112, Lots 9, 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a school granted under a special permit, which expired on April 9, 2006; and

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in the *City Record*, and then to decision on August 15, 2006; and

WHEREAS, on April 9, 2002, under the subject calendar number, the Board granted an application to permit the construction of a school (UG 3A) in a C8-2 zoning district, which expired on April 9, 2006; and

WHEREAS, the applicant states that the reason for the requested extension of time is that construction has not commenced due to funding issues; and

WHEREAS, the applicant represents that construction could be completed in three years; and

WHEREAS, the Board has determined that the evidence in the record supports the grant of the requested extension.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on April 9, 2002, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction, for a period of three years from the date of this resolution to expire on August 15, 2009; *on condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

MINUTES

Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 301079124)

Adopted by the Board of Standards and Appeals, August 15, 2006.

189-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Bill Wolf Petroleum Corp., owner.

SUBJECT – Application June 14, 2006 – Extension of Time/Waiver to complete construction and obtain a Certificate of Occupancy for an automotive service station with an accessory convenience store which expired on October 21, 2005. The premise is located in a C2-2/R-5 zoning district.

PREMISES AFFECTED – 836 East 233rd Street, southeast corner of 233rd Street and Bussing Avenue, block 4857, Lots 44, 41, Borough of The Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rhinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner

Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction and obtain a certificate of occupancy for a gasoline service station with accessory convenience store, which expired on October 21, 2005; and

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in the *City Record*, and then to decision on August 15, 2006; and

WHEREAS, on April 7, 1959, under BSA Cal. No. 292-58-BZ, the Board granted a variance for Lot 44, to permit, in an R5(C2-2) zoning district, the construction of a gasoline service station with accessory uses; and

WHEREAS, subsequently, at various times, the grant was amended and extended, most recently on June 27, 1995; and

WHEREAS, on October 21, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-211, to permit the legalization of the enlargement of the zoning lot to include Lot 41; and

WHEREAS, on June 14, 2005, the grant was amended to permit the enlargement and conversion of the existing service bays to an accessory convenience store; and

WHEREAS, a condition of the June 14, 2005 grant was that a certificate of occupancy be obtained by October 21, 2005; and

WHEREAS, the applicant states that a certificate of occupancy was not obtained; and

WHEREAS, the applicant states that construction was delayed, but is to begin shortly and is expected to last between six and twelve months; and

WHEREAS, the Board has determined that the evidence in the record supports the finding that the requested extension of time to complete construction and obtain a certificate of occupancy is appropriate, with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated October 21, 2003, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction and obtain a certificate of occupancy for a gasoline service station with accessory convenience store for an additional term of three years from the expiration of the prior grant, to expire on October 21, 2008; *on condition:*

THAT a certificate of occupancy be obtained by October 21, 2008;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 200869916)

Adopted by the Board of Standards and Appeals, August 15, 2006.

362-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Reiss Realty Corporation, owner.

SUBJECT – Application June 1, 2006 – Extension of Time to obtain a Certificate of Occupancy for an accessory parking lot to a commercial use group which expired on May 11, 2006. The premise is located in an R8 zoning district.

PREMISES AFFECTED – 428 West 45th Street, south side of West 45th Street, between 9th and 10th Avenues, Block 1054, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Josh Rhinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner

Collins.....3

Negative:.....

MINUTES

0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for an accessory parking lot to a commercial use, which expired on May 11, 2006; and

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in the *City Record*, and then to decision on August 15, 2006; and

WHEREAS, on April 15, 1941, the Board granted an application under BSA Cal. No. 1071-40-BZ, to permit the parking of more than five motor vehicles; and

WHEREAS, this grant was subsequently amended and extended at various times, including on February 8, 1944 to permit the storage of chemical solvents in a one-story structure at the rear of the lot; and

WHEREAS, the grant lapsed in 1996 and, on May 11, 2004, under the subject calendar number, the Board granted an application to re-establish the variance for a ten-year term to expire on May 11, 2014; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained due to administrative oversight; and

WHEREAS, at hearing, the Board asked the applicant how much time would be needed to secure a new certificate of occupancy; and

WHEREAS, the applicant responded that one year would be sufficient time to obtain the new certificate of occupancy; and

WHEREAS, additionally, the Board notes that a condition of the May 11, 2004 grant was that the use of the small building at the site for the storage of chemical solvents be discontinued; and

WHEREAS, at hearing, the Board asked the applicant if chemical solvents were still being stored in the building; and

WHEREAS, the applicant responded that the storage of chemicals has been discontinued; and

WHEREAS, the applicant submitted a letter from the property owner stating that the building had not been used for storage of chemicals since the mid-1960s; and

WHEREAS, the Board has determined that the evidence in the record supports a grant of the requested amendment to the prior resolution with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated May 11, 2004, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a new certificate of occupancy for an additional term of one year from date of this grant, to expire on August 15, 2007; *on condition:*

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or

configuration(s) not related to the relief granted." (DOB Application No. 103568827)

Adopted by the Board of Standards and Appeals, August 15, 2006.

802-48-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Sheldon Rodbell 1993 Trust #2, owner; Beach Channel Island Drive, lessee.

SUBJECT – Application November 2, 2005 – Pursuant to ZR 11-411 for the Extension of Term of a UG16 gasoline service station with automotive repair for a term of ten years, to expire in June 24, 2015. This application also purposes to legalize the conversion of two service bays to an accessory convenience store, maintain one service bay for minor auto repairs and the continuation of gasoline service sales. The premise is located in an R5 zoning district.

PREMISES AFFECTED – 13-46 Beach Channel Dr., a/k/a 2118 Dix Place, Northeast corner of Beach Channel Drive and Dix Place, Block 15527, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for continued hearing.

1888-61-BZ

APPLICANT – Alfonso Duarte, for Ali Amanolahi, owner.

SUBJECT – Application June 21, 2005 – Pursuant to Z.R. §11-412 for an Amendment to an eating and drinking establishment and catering hall for the further increase in floor area and the to legalize the existing increase in floor area, the separate entrance to the catering hall and the drive thru at the front entrance. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 93-10 23rd Avenue, southwest corner of 94th Street, Block 1087, Lot 1, Elmhurst, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

For Administration: John Yacavone, Fire Department.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for continued hearing.

441-65-BZ

APPLICANT – Sheldon Lobel, P.C. for Eleanor Barrett c/o JP Morgan Chase, owner; Hess Amerada Corporation, lessee.

SUBJECT – Application March 20, 2006 – Pursuant to ZR 73-11 & 73-211 an Amendment to a previously granted special permit for the redevelopment of a gasoline service station, to construct an accessory convenience store (Hess Express), to construct a new canopy and six pump islands with MPD dispensers and one diesel fuel dispenser. The

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premise is located in C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2488 Hylan Boulevard, located on the east side of Hylan Boulevard between Jacques Avenue and New Dorp Lane, Block 3900, Lot 12, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Josh Rinesmith and Marc Pilotta.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10:00 A.M., for continued hearing.

203-92-BZ

APPLICANT – Sullivan, Chester & Gardner, P.C., for Austin-Forest Assoc., owner; Lucille Roberts Org., d/b/a Lucille Roberts Figure Salon, lessee.

SUBJECT – Application January 26, 2005 – Extension of Term/Amendment/Waiver for a physical culture establishment. The premise is located in an R8-2 zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side, 333' west of 71st Avenue, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

68-94-BZ, Vol. II

APPLICANT – Cozen O'Connor, for Bay Plaza Community Center LLC, owner; Jack Lalanne Fitness Centers, Incorporated, lessee.

SUBJECT – Application June 30, 2006 – This application is to Reopen and Extend the Time to Obtain a Certificate of Occupancy for the operation of a PCE (Bally Total Fitness) on the first and second floors of the Co-Op City Bay Plaza shopping center which expires on August 23, 2006. The requested amount of time is 18 months. The premise is located in an C4-3 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, Southside at eastern-most side of Baychester Avenue, Block 5141, Lot 810, Borough of the Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

114-94-BZ, Vol. II

APPLICANT – Ralph Giordano, AIA for Freehold SL Limited Partnership, owner; Kentucky Fried Chicken Corporation, lessee.

SUBJECT – Application March 24, 2006 – Extension of Term/Waiver – to allow the continuation of a drive-thru-facility that is accessory to an existing eating and drinking establishment located in a C1-2 zoning district which expired on July 2, 2005. The application seeks to renew the term for an additional 5 years.

PREMISES AFFECTED – 44 Victory Boulevard, Bay Street and Van Duzer Street, Block 498, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: John Lafemina.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

182-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2465 Broadway Associates, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar, first and second floors of a commercial building. This is a companion case to 183-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2465/73 Broadway, west Broadway, 50' south of intersection with 92nd Street, Block 1239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for continued hearing.

183-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Haymes Broadway, LLC, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar of a commercial building. This is a companion case to 182-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2473/5 Broadway, southwest corner of Broadway, and West 92nd Street, Block 1239, Lot 55, Borough of Manhattan.

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COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

353-05-BZY

APPLICANT – Cozen & O'Connor for Emet Veshlom Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

For Opposition: John Keefe for Assembly Member Brennan, Joe Levine, Monica Staline, Mic Hollvin, Joe Ferri, and other.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

63-06-A

APPLICANT – Sheldon Lobel, P.C.,

OWNERS: Kevin and Alix O'Mara

SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jay Segal, Jane Swanson for Council Member Jessica Lappin, Norman Marcus, Cornelies Dennis, Barnett Brimberg, Michael Parley, Brian Cook, Lo Van der Valk,

Bridget O'Brien, Brenda Levin and other.

For Opposition: Margerie Perlmutter, Kevin O'Mara and Alix O'Mara.

For Administration: Felicia Miller, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

81-06-A

APPLICANT – Whitney Schmidt, Esq.

OWNERS: Kevin and Alix O'Mara

SUBJECT – Application May 2, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Whitney Schmidt, Esther Schmidt, Michael Parley, Brian Cook, Lo Van der Valk, Bridget O'Brien, Brenda Levin and other.

For Opposition: Margerie Perlmutter, Kevin O'Mara and Alix O'Mara.

For Administration: Felicia Miller, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 15, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Collins.

ZONING CALENDAR

128-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yisroel Y. Leshkowitz & Esther S. Leshkowitz, owner.

SUBJECT – Application May 24, 2005 – under Z.R. § 73-622 – to permit the proposed enlargement of an existing single family residence, located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and rear yard, is contrary to Z.R. § 23-141, § 23-461 and § 23-47.

PREMISES AFFECTED – 1406 East 21st Street, between Avenue “L” and “M”, Block 7638, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman, David Shteierman and Jacob Leshkowitz.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 3, 2005, acting on Department of Buildings Application No. 301946438, reads, in pertinent part:

- “1. Proposed floor area contrary to ZR 23-141.
- 2. Proposed open space ratio contrary to ZR 23-141.
- 3. Proposed side yard contrary to ZR 23-461.
- 4. Proposed rear yard contrary to ZR 23-47.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, open space ratio, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, as a threshold matter in this application, the Board notes that when the case was initially filed, the

applicant essentially proposed a full demolition of the existing building, with only a single wall being maintained; and

WHEREAS, subsequently, the applicant indicated that even this single wall would not remain; instead, the only elements of the existing building proposed to be retained were certain sub-grade foundational elements and first floor joists; and

WHEREAS, at hearing, the Board expressed concern about this proposal, and noted that the text of ZR § 73-622 allows enlargements only of existing buildings, not what is better characterized as new ground-up development; and

WHEREAS, ZR § 73-622, reads, in pertinent part: “The Board of Standards and Appeals may permit an enlargement of a single-or-two-family detached or semi-detached residence”; and

WHEREAS, when the Board makes a grant under this section, it may modify zoning requirements related to floor area, side and rear yards, lot coverage and open space, and street wall height, assuming certain parameters are met; and

WHEREAS, the Board observes that nowhere in the text of ZR § 73-622 is there any language giving it the authority to permit construction of a new building that retains almost none of the existing residence to be enlarged; and

WHEREAS, the Board also notes that ZR § 12-10 defines “Enlargement”, in part, as an addition to the floor area of an *existing* building; and

WHEREAS, a site that only is improved upon with foundational elements and the first floor joists contains no floor area to be enlarged, since there is no existing building; and

WHEREAS, further, the Board notes that ZR § 12-10 defines “Residence” as a building containing dwelling or rooming units; and

WHEREAS, since the existing building will be demolished to the point where no dwelling or rooming units remain, there is no residence to be enlarged; and

WHEREAS, based on these definitions, as well as the language of the introductory paragraph of ZR § 73-622, the Board reasonably determined that the proposal initially filed by the applicant was beyond its jurisdiction to approve through this special permit; and

WHEREAS, accordingly, the Board informed the applicant that the proposal should be modified to reflect the retention of a reasonable portion of the existing residence; and

WHEREAS, the applicant returned to the Department of Buildings, and over the course of the hearing process, produced two opinions of the Brooklyn Borough Commissioner, which it contends support a conclusion that construction of a home where only foundational elements of the existing residence have been retained may still be an enlargement; and

WHEREAS, the Board notes that the first of these opinions, dated May 15, 2006, merely confirms that the applicant’s initial could be characterized as an alteration by DOB, and thus appropriate for issuance of an alteration permit rather than a new building permit; and

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WHEREAS, the Board reviewed this opinion, and informed the applicant that notwithstanding DOB's willingness to issue an alteration permit, it only had authority to grant the home enlargement special permit where the plain language of ZR § 73-622 was respected; and

WHEREAS, the Board explained that DOB's practice as to permitting is not binding upon the Board as it applies the special permit language; and

WHEREAS, the applicant then obtained and produced a second opinion, dated July 7, 2006, which indicated that the proposal, as described by the applicant in the opinion request form, meets the definition of an "enlargement"; and

WHEREAS, on this request form, the applicant's representative stated that there was an existing single-family home on the premises that was proposed to be enlarged; and

WHEREAS, the representative then set forth that part of the ZR § 12-10 "Enlargement" definition that states that an enlargement is also an increase in the size of "any other structure"; and

WHEREAS, the representative proceeded to use the Building Code definition of "structure" to establish that the portions of the foundation and first floor joist proposed to be retained constituted a "structure"; and

WHEREAS, the representative concluded that since the proposal contemplated an increase in the size of a structure, it could be properly characterized as an enlargement; and

WHEREAS, the applicant submitted this second opinion to the Board and stated that it was binding upon the Board in the instant application; and

WHEREAS, while the Board does not question the logic of the Borough Commissioner's conclusion that the abstract description of the proposal as presented by the applicant's representative would technically meet one of the definitions of "enlargement" as set forth in the ZR, it disagrees with the applicant that this conclusion has any bearing on the instant application; and

WHEREAS, as noted above, the word "enlargement" as set forth in ZR § 73-622 relates to an existing residence, with existing dwelling or rooming units; and

WHEREAS, the word "enlargement" must be construed and applied in a way that respects the plain language of the special permit text in its entirety; and

WHEREAS, the applicant's representative's definitional argument completely ignores the context of the word "enlargement" within the special permit text; and

WHEREAS, further, if this argument was accepted by the Board, it would reduce the subject special permit to nothing more than a bulk bonus for new development; and

WHEREAS, this is clearly contrary to both the plain language and the intent of the special permit; and

WHEREAS, a letter entered into the record in this case by the Department of City Planning (DCP), the drafters of the special permit text, confirms this fact; and

WHEREAS, specifically, in a letter dated August 8, 2006, counsel to DCP agrees with the Board that the word "enlargement" must be read in conjunction with what it modifies (i.e. a single-or two-family detached or residence); and

WHEREAS, DCP counsel states "[T]his special permit is limited to enlargement of buildings that are, both in fact and in law, single- or two-family detached or semi-detached residences"; and

WHEREAS, DCP counsel concludes that the interpretation offered by the applicant is contrary to this plain language; and

WHEREAS, DCP counsel also notes that the intention of the special permit (as set forth in the Report of the City Planning Commission, dated December 22, 1997, approving the special permit text) is "to provide a means for owners of single and two-family residences to make enlargements to their *existing* homes"; and

WHEREAS, finally, DCP counsel agreed with the Board that DOB's permitting practice is not binding as to the Board's application of the special permit; and

WHEREAS, based upon the above, the Board rejects all of the applicant's arguments on this issue; and

WHEREAS, the Board notes that the applicant subsequently revised its proposal to reflect the retention of a significant amount of the existing residence, such that the Board concludes that both the plain language and the intent of the special permit provision is respected; and

WHEREAS, specifically, the applicant revised the plans to indicate that portions of the walls would be retained from the basement up to the second floor and that some parts of the floor joists, and therefore the level of the floors, would be maintained; and

WHEREAS, a public hearing was held on this application on February 28, 2006, after due notice by publication in *The City Record*, with continued hearings on March 28, 2006, May 9, 2006, June 20, 2006, and July 25, 2006, and then to decision on August 15, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the west side of 21st Street, between Avenue L and Avenue M; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 2,069.7 sq. ft. (0.52 FAR) single-family dwelling; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,069.7 sq. ft. (0.52 FAR) to 4,001.5 sq. ft. (1.0 FAR); the maximum floor area permitted is 2,000 sq. ft.; and

WHEREAS, the proposed enlargement will decrease the open space from 2,940.8 sq. ft. to 2,255.5 sq. ft. (the minimum required open space is 3,000 sq. ft.) and decrease the open space ratio from 142.1 percent to 56.4 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the proposed enlargement will maintain one 3'-10 1/4" side yard (an existing non-compliance) and reduce one side yard from 11'-0" to 8'-6" (the minimum side

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yard requirement is a total of 13'-0" with a minimum width of 5'-0"); and

WHEREAS, the proposed enlargement will reduce the rear yard from 28'-1/4" to 20'-8" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the enlargement will reduce the front yard from 26'-0" to 15'-8" (the minimum front yard required is 15'-0"); and

WHEREAS, the Board notes that the proposed wall height and overall height complies with applicable R2 district requirements; and

WHEREAS, additionally, the applicant reduced the proposed FAR from 1.04 to 1.0, at the Board's request; and

WHEREAS, the Board notes that this FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, however, the Board required the applicant to remove the porches from the plans, so that any proposed porches may be approved by DOB; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, open space ratio, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 1, 2006"-(4) sheets and "August 15, 2006"-(7) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,001.5 sq. ft., a total FAR of 1.0, a street wall height of 22'-1 1/2", and a total height of 35'-8 1/2", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls

shall be retained and not demolished as indicated on the BSA-approved plans labeled A-3, A-4, A-5 and A-10A, dated August 15, 2006 and A-10, dated August 1, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT DOB shall review and approve the size and location of the front and rear porches (notwithstanding the illustration of any porch element on the BSA-approved plans);

THAT DOB shall review and approve the location of any garage;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 15, 2006.

11-06-BZ

APPLICANT – The Law Office of Frederick A. Becker for Miriam Schubert and Israel Schubert, owner.

SUBJECT – Application January 18, 2006 – Under Z.R. § 73-622 to permit the enlargement to an existing single family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio and rear yard (Z.R. § 23-141 and § 23-47). PREMISES AFFECTED – 1245 East 22nd Street, East 22nd Street between Avenue K and Avenue L, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman, Fredrick A. Becker and David Shtierman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner

Collins.....3

Negative:.....

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0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 12, 2006 acting on Department of Buildings Application No. 302039336, reads, in pertinent part:

1. Proposed floor area contrary to ZR 23-141.
2. Proposed open space ratio contrary to ZR 23-141.
3. Proposed rear yard contrary to ZR 23-47.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, as a threshold matter in this application, the Board notes that when the case was initially filed, the applicant essentially proposed a full demolition of the existing building, with only a single wall being maintained; and

WHEREAS, subsequently, the applicant indicated that even this single wall would not remain; instead, the only elements of the existing building proposed to be retained were certain sub-grade foundational elements; and

WHEREAS, at hearing, the Board expressed concern about this proposal, and noted that the text of ZR § 73-622 allows enlargements only of existing buildings, not what is better characterized as new ground-up development; and

WHEREAS, accordingly, the Board informed the applicant that the proposal should be modified to reflect the retention of a reasonable portion of the existing residence; and

WHEREAS, the Board notes that the same applicant brought another ZR § 73-622 application under BSA Cal. No. 128-05-BZ, which raised the same issue; and

WHEREAS, for the reasons set forth in the resolution issued under Cal. No. 128-05-BZ, also decided the date hereof, the Board rejects all of the applicant’s arguments on this issue; and

WHEREAS, the Board notes that the applicant subsequently revised its proposal to reflect the retention of a significant amount of the existing residence, such that the Board concludes that both the plain language and the intent of the special permit provision is respected; and

WHEREAS, specifically, the applicant revised the plans to indicate that portions of the walls would be retained from the basement up to the second floor and that some parts of the floor joists, and therefore the level of the floors, would be maintained; and

WHEREAS, a public hearing was held on this application on May 9, 2006, after due notice by publication in *The City Record*, with continued hearings on June 20, 2006 and July 25, 2006, and then to decision on August 15, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner

Collins; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and
WHEREAS, the subject lot is located on the east side of East 22nd Street, between Avenue K and Avenue L; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 2,367.24 sq. ft. (0.59 FAR) single-family dwelling; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,367.24 sq. ft. (0.59 FAR) to 4,116.92 sq. ft. (1.03 FAR); the maximum floor area permitted is 2,000 sq. ft.; and

WHEREAS, the proposed enlargement will decrease the open space from 3,129.3 sq. ft. to 2,289 sq. ft. (the minimum required open space is 3,000 sq. ft.) and decrease the open space ratio from 132.2 percent to 55.6 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the proposed enlargement will maintain one 5’-4” side yard and reduce one side yard from 9’-4 ½” to 8’-0” (the minimum side yard requirement is a total of 13’-0” with a minimum width of 5’-0”); and

WHEREAS, the proposed enlargement will reduce the rear yard from 32’-7 ½” to 20’-0” (the minimum rear yard required is 30’-0”); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, the enlargement will reduce the front yard from 30’-0” to 15’-0” (the minimum front yard required is 15’-0”); and

WHEREAS, the Board notes that the proposed wall height and overall height complies with applicable R2 district requirements; and

WHEREAS, the Board notes that the proposed FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, nonetheless, the Board required the applicant to remove the porch from the plans, so that any proposed porch may be approved by DOB; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2)

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and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 1, 2006"-(5) sheets and "August 15, 2006"-(7) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,116.92 sq. ft., a total FAR of 1.03, a street wall height of 22'-1 1/2", and a total height of 34'-10 1/2", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled A-3, A-4, A-5, and A-7A, dated August 15, 2006 and A-7, dated August 1, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT DOB shall review and approve the size and location of the front and rear porches (notwithstanding the illustration of any porch element on the BSA-approved plans);

THAT DOB shall review and approve the location of any garage;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 15, 2006.

127-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Kaufman Center, owner.

SUBJECT – Application June 16, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to enlarge an existing community facility building. Proposal is non-compliant regarding floor area ratio (FAR) and rear yard. The site is located within a C4-7(L) zoning district; contrary to Z.R. 33-123 and 33-26.

PREMISES AFFECTED – 129 West 67th Street, north side of 67th Street, between Broadway and Amsterdam Avenue, Block 1139, Lots 1, 8, 57, 107, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner

Collins.....3

Negative:.....0

0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 5, 2006, acting on Department of Buildings Application No. 104290946, reads, in pertinent part:

1. Proposed floor area for community facility exceeds the maximum floor area. This is contrary to ZR 33-123.
2. Proposed new enlargement projects in required rear yard. This is contrary to ZR 33-26.”; and

WHEREAS, this is an application under ZR § 72-21, to permit an enlargement to an existing community facility building located in a C4-7 zoning district within the Special Lincoln Square District zoning district, which is contrary to ZR §§ 33-123 and 33-26; and

WHEREAS, the application is brought on behalf of the Elaine Kaufman Center (the “Center”), a nonprofit music and dance school and performance space which occupies the community facility building located on Lot 8; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in the *City Record*, and then to decision on August 15, 2006; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the New York City Department of Education and the Special Music School (P.S. 859), which occupies part of the Center, provided testimony in support of the Center’s programs and its application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, the site is located on the north side of 67th Street between Broadway and Amsterdam Avenue; and

WHEREAS, the zoning lot is comprised of four tax lots (Lot Nos. 1, 8, 57, and 107); and

WHEREAS, the Center occupies Lot 8; the other lots are separately owned and occupied by residential uses; and

WHEREAS, on June 11, 1984, the Center, then known as the Hebrew Arts School for Music and Dance, entered into a Zoning Lot and Development Agreement with the owners of the other tax lots; and

WHEREAS, through the creation of this combined zoning

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lot, the Center transferred 57,359.51 sq. ft. of its buildable floor area on Lot 8 to Lot 1, for construction of a 47-story residential building; and

WHEREAS, the applicant notes that, pursuant to ZR § 33-123, a community facility building in a C4-7 zoning district may have a maximum FAR of 10.0; and

WHEREAS, therefore, a significant amount of floor area would be available under applicable zoning regulations but, because of the prior floor area transfer, none is available for the proposed enlargement; and

WHEREAS, the Center occupies a six-story community facility building with approximately 35,131 sq. ft. of floor area; and

WHEREAS, the applicant proposes to enlarge the facility by inserting new floors within double-height spaces in the basement and on the first floor and by enclosing first and second floor terraces at the rear of the building; and

WHEREAS, the applicant notes that the majority of the proposed increase in floor area is within the building envelope; and

WHEREAS, the proposed insertion of the new floors and enclosure of the terrace increases the floor area on Lot 8 by 3,200 sq. ft.; and

WHEREAS, however, the floor area objection issued by DOB (cited above) relates to the entire zoning lot; the total floor area of the combined zoning lot is 636,897.35 sq. ft.; the proposed enlargement of 3,200 sq. ft. would result in a new total of 640,097.35 sq. ft.; and

WHEREAS, the enclosure of the terraces also creates a new non-compliance as to the required rear yard at the second floor (the proposed community facility use within the required rear yard is a permitted obstruction only for one floor or a height of 23 ft.); and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Center, a non-profit multi-cultural arts organizations which includes three divisions – the Merkin Concert Hall, the Lucy Moses School for Music and Dance, and the Special Music School of America (P.S. 859, a New York City public school with a music focus); and

WHEREAS, however, the applicant represents that there will be no increase in patronage or enrollment associated directly with the Center's enlargement; and

WHEREAS, instead, the applicant seeks to alleviate current space constraints and develop educational, cultural, and artistic programming while improving physical accessibility; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Center which require the requested waivers: (1) an increase in attendance over the past 22 years; (2) a need for better visitor circulation within the building, and (3) an interest in making the building more handicapped-accessible; and

WHEREAS, as to attendance, the Center now serves 2,400 students (an increase from 400 in 1984), 145 of which are full-time New York City public school students; and

WHEREAS, additionally, the applicant represents that the increased attendance requires more space to conduct staff meetings, plan events and programs and to meet with parents; and

WHEREAS, the applicant has identified underutilized space in the basement and on the first floor and on the two levels of terraces at the rear of the building which could be enclosed to accommodate increased space needs; and

WHEREAS, as to visitor circulation, the applicant represents that the entry into Merkin Concert Hall is constrained; and

WHEREAS, as to handicapped-accessibility, the Center proposes to enlarge lower level restrooms and establish two accessible restrooms on the first floor; and

WHEREAS, in sum, the building as enlarged will provide additional study and meeting space, efficient ingress and egress, waiting space, technical improvements to the auditorium, and handicapped-accessibility; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the enlargement is necessary to address the Center's programmatic needs, given the limitations of the existing building; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the existing building, when considered in conjunction with the programmatic needs of the Center, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Center is a non-profit educational institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the majority of the increase in floor area will be achieved by using several double-height spaces from the basement and first floor; and

WHEREAS, additionally, the applicant represents that the enclosure of the first floor terrace is a permitted rear yard obstruction; and

WHEREAS, the only change to the building's envelope will be the enclosure of the existing terrace in the rear of the building; and

WHEREAS, the applicant represents that there will be no significant impact on adjacent neighbors' light and air since there are no windows on the façade of the adjacent residential building and the enclosed terrace will not block any of the windows of the residential building at the rear of the Center; and

WHEREAS, further, the applicant represents that there will be no increase in patronage or enrollment associated directly with the Center's enlargement because the enlargement seeks solely to alleviate current insufficient

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space needs and circulation inefficiencies; and

WHEREAS, the Board also observes that the Center contributes to the Special Lincoln Square District's goals of advancing the performing arts; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Center could occur on the existing lot; and

WHEREAS, the applicant states that while the 1984 zoning lot merger negated the opportunity for any increase in zoning floor area as of right, this fact in of itself does not mean that the need for additional floor area is a self-created hardship; and

WHEREAS, however, the applicant has provided evidence that demonstrates that the Center's programmatic needs have changed dramatically since the zoning lot merger; and

WHEREAS, specifically, the applicant represents that at the time of the lot merger, it was not anticipated that a public school would be part of the Center; and

WHEREAS, the Board notes that the school was not established and did not occupy the Center until 1996; and

WHEREAS, the applicant represents that the present needs of the Center and P.S. 859, operating at capacity with 145 full-time students, could not have been foreseen in 1984, when there was only 400 students of the predecessor center for arts and dance; and

WHEREAS, accordingly, the applicant asserts that the development rights were transferred in good faith since the future requirements of the Center with the public school component, in addition to its original programming, were not contemplated; and

WHEREAS, the Board agrees with the applicant that there is no nexus between the 1984 merger and the present need for this request for additional floor area to be located primarily within the building envelope; and

WHEREAS, the Board also understands that there was no intent to create a hardship in 1984, and that the Center was compelled to pursue the merger because of financial pressures; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested floor area waiver is the minimum waiver necessary to accommodate the current and projected programmatic needs; and

WHEREAS, the Board notes that the applicant will locate this floor area completely within the building footprint and almost completely within the building envelope so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the

requested relief is the minimum necessary to allow the Center to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA099M, dated June 16, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit an enlargement to an existing community facility building located in a C4-7 zoning district within the Special Lincoln Square District zoning district, which is contrary to ZR §§ 33-123 and 33-26, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 16, 2006"- eight (8) sheets and marked "Received August 15, 2006" – one (1) sheet; and *on further condition*:

THAT the total building floor area post-enlargement shall not exceed 38,331.0 sq. ft., as illustrated on the BSA-approved plans;

THAT the total zoning lot floor area post-enlargement shall not exceed 640,097.35 sq. ft.;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved

MINUTES

only for the portions related to the specific relief granted; and THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 15, 2006.

47-05-BZ

APPLICANT – Cozin O’Connor, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 – Under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: B. Hair.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for deferred decision.

165-05-BZ

APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.

SUBJECT – Application July 25, 2005 – Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.

PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156’-3” East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jeffrey A. Chester, Dan Segal, Chadwick Castle, and Alberto Dange.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for continued hearing.

290-05-BZ

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated 4/19/06 – Variance pursuant to Z.R. Section 72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 & 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95’ east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein, Chaim Weinberg, Esther Drezdner, Abraham Einhorn, Pinchas, Dembiler.

For Opposition: Mr. Steinberg, Rabbi Israel Steinberg and David Garber.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for decision, hearing closed.

60-06-A

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application April 5, 2006 - Request pursuant to Section 666 of the New York City Charter for a reversal of DOB's denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95’ east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein, Chaim Weinberg, Esther Drezdner, Abraham Einhorn, Pinchas, Dembiler.

For Opposition: Mr. Steinberg, Rabbi Israel Steinberg and David Garber.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for decision, hearing closed.

291-05-BZ

APPLICANT – Eric Palatnik, P.C. for Rallaele DelliGatti, owner.

SUBJECT – Application September 22, 2005 – Pursuant to ZR 72-21 for a Variance to allow for the demolition of an existing single family residence and its re-development with a new single family residence which has less than the required front yard, ZR 23-45. The premise is located in an R-2A zoning district.

PREMISES AFFECTED - 10-33 Burton Street, Burton Street between 12th Avenue and 12th Road, Block 4607, Lot 26, Borough of Queens.

COMMUNITY BOARD #7Q

MINUTES

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for continued hearing.

37-06-BZ

APPLICANT – Leo Weinberger, Esq., for 180 Lafayette Corporation, owner, Skin Care 180, Incorporated, lessee.

SUBJECT - Application March 2, 2006 – under Z.R. §73-36 to allow the proposed PCE (Jasmine Spa) on the first floor and cellar level in an existing seven-story building. The premise is located in a M1-5B zoning district.

PREMISES AFFECTED – 180 Lafayette Street, east side of Lafayette Street between Grand and Broome Streets, Block 473, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Leo Weinberger and Doris Diether, Community Board #2M.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 7:00 P.M.

BULLETIN

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September 1, 2006

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SATISH BABBAR, *Vice-Chair*

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DOCKETS

New Case Filed Up to August 22, 2006

176-06-BZ

1253 East 28 Street, East side of East 28 Street, Block 7646, Lot 24, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622 - To extend rear at first floor and cellar.

177-06-BZ

1840 Richmond Terrace, Clove Road and Bodine Street, Block 201, Lot 32, Borough of **Staten Island, Community Board: 1**. Under 72-21,11-411 & 11-413-A new variance application to reinstate variance originally granted under the 1916 Zoning Resolution and to permit the change of use to similar uses in the same Use Group.

178-06-BZ

609 Madison Avenue, Southeast corner of Madison Avenue and East 58th Street, Block 1293, Lot 50, Borough of **Manhattan, Community Board: 8**. (SPECIAL PERMIT) 73-36 - to allow the operation of a Physical culture Establishment/Spa at the subject premises. The spa is located in portions of the cellar, first floor and second floor of a multi-story, mixed use building.

179-06-A

11 Beach 220th Street, East side 220th Street 249.72' north of 4th Avenue., Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3 - Proposed reconstruction and enlargement of existing single family dwelling not fronting a mapped street.

180-06-BZ

515 West 185th Street, Northwest corner of Amsterdam Avenue and West 185th Street, extending 214 feet, 10 inches along Amsterdam Avenue and 250 feet along West 185th Street., Block 2156, Lot 48,61,64,146,147, Borough of **Manhattan, Community Board: 12**. Under 72-21 - To construct a new building that does not fully comply with the applicable lot coverage, rear yard and height and setback regulations and (2) cure an existing non-comply condition on the subject zoning lot.

181-06-BZ

471 Washington Street, Southeast corner of the intersection of Washington and Canal Streets, Block 595, Lot 33, Borough of **Manhattan, Community Board: 1**. Under 72-21 - To permit the construction of a new nine-story building with residential use on its upper eight floors.

182-06-A

146 Beach 5 Street, Bound by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th street to the west and Reynolds Channel to the south., Block 15608, Lot 1, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

183-06-A

148 Beach 5 Street, Bounded by Seagirt Avenue to north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south., Block 15608, Lot 40, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

184-06-A

150 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 42, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

194-06-A

134 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 67, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

185-06-A

152 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 45, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

186-06-A

154 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 51, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

DOCKET

187-06-A

156 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 52, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

188-06-A

158 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 53, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

189-06-A

160 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 57, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

190-06-A

126 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 58, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

191-06-A

128 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 61, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

192-06-A

130 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 63, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

193-06-A

132 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 65, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

195-06-A

136 Beach 5 Street, Bound by Seagirt Avenue to thr north, Beach 5th Street to the east, Beach 6th Streetto the west and Reynolds Channel to the south., Block 15609, Lot 69, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

196-06-A

151 Beach 5 Street, Bound by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th Street to the west and Reynolds Channel to the south., Block 15609, Lot 1, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

197-06-A

153 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th to the west and Reynolds Channel to the south., Block 15609, Lot 3, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

198-06-A

155 Beach 5 Street, Bound by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th Street to the west and Reynolds Channel to the south, Block 15609, Lot 6, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issue building permits.

199-06-A

157 Beach 5 Street, Bound by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th Street to the west and Reynolds Channel to the south, Block 15609, Lot 8, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issue building permits.

DOCKET

212-06-BZ

242-02 61st Avenue, Douglaston Parkway and 61st Avenue., Block 8286, Lot 185, Borough of **Queens, Community Board: 11**. Under 72-21 - To convert an existing 41,913 sf supermarket (UG6) into an electronic store with no limitations on floor area (UG10).

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

OCTOBER 17, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 17, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

459-73-BZ

APPLICANT – Sheldon Lobel, P.C., for Joseph Angelone, owner.

SUBJECT –Application August 21, 2006 - Extension of Term of a special permit, granted pursuant to section 73-50 of the zoning resolution, allowing a waiver of the rear yard requirement for a lot located along district boundaries. The premises is located within a C8-1 zoning district.

PREMISES AFFECTED – 2424-48 Flatbush Avenue, southwest corner of the intersection of Flatbush Avenue and Avenue T, Block 8542, Lots 41 and 46, Borough of Brooklyn.

COMMUNITY BOARD #18BK

1289-80-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, Esq., for Fred Straus, owner; Bally Total Fitness, lessee.

SUBJECT –Application August 18, 2006 - Extension of Term of a variance allowing the operation of a Physical Culture establishment in a C1-3/R6 zoning district.

PREMISES AFFECTED – 298 West 231st Street, southwest corner of Tibbett Avenue, Block 5711, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #8BX

938-82-BZ

APPLICANT – Eric Palatnik, P.C., for A. Brothers Realty, Inc., owner; Eugene Khavenson, lessee.

SUBJECT – Application August 4, 2006 - to re-open the previous BSA resolution granted on May 17, 1983 to extend the term of the variance for twenty (20) years. The application also seeks a waiver of the BSA Rules of Practice and Procedure as the subject renewal request is beyond the permitted filing period. Prior grant allowed a one-story commercial office building (UG 6) in an R4 district; contrary to ZR Section 22-10.

PREMISES AFFECTED – 2470 East 16th Street, northwest corner of Avenue Y, block 7417, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #15BK

331-98-BZ

APPLICANT– Sheldon Lobel, P.C., for Sean Porter, owner.

SUBJECT – Application April 20, 2006 - Application seeks an extension of term for a special permit under section 73-244 of the zoning resolution which permitted the operation of an eating and drinking establishment with entertainment and dancing with a capacity of more than 200 persons at the premises. In addition the application seeks a waiver of the Board's Rules and Procedure due the expiration of the term on April 20, 2005. The site is located in a C2-3/R6 zoning district.

PREMISES AFFECTED – 1426-1428 Fulton Street, southside of Fulton between Brooklyn and Kingston Avenue, Block 1863, Lots 9 & 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEALS CALENDAR

91-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Deborah & John Vesey, lessee.

SUBJECT – Application May 9, 2006 - Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of a mapped street (Beach 211th Street), and the upgrade of an existing private disposal located within the bed of a mapped street and service lane (Lincoln /Marion Service Road) is contrary to Section 35, General City Law and Buildings Department Policy .Premises is located within an R4 Zoning District

PREMISES AFFECTED – 38 Lincoln Walk, west side Lincoln Walk 120.5' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

101-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Jennifer & Peter Frank, owners.

SUBJECT –Application May 23, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling located in the bed of a mapped street contrary to Section 35, Article 3 of the General City Law and the upgrade of an existing private disposal system located within the bed of mapped street contrary to Section 35, Article 3 of the General City Law .Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 35 Market Street, north side Rockaway Point Boulevard at intersection of mapped Beach 202nd Street, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

154-06-A

APPLICANT – Cozen O'Connor Attorneys, Flan Realty, LLC, owner.

SUBJECT – Application July 12, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development

CALENDAR

commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.

PREMISES AFFECTED – 357 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #6BK

155-06-A

APPLICANT – Cozen O’Connor Attorneys, Flan Realty, LLC, owner.

SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.

PREMISES AFFECTED – 359 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #6BK

179-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Deborah & John Vesey, lessee.

SUBJECT – Application May 9, 2006 - Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of a mapped street (Beach 211th Street), and the upgrade of an existing private disposal located within the bed of a mapped street and service lane (Lincoln/Marion Service Road) is contrary to Section 35, General City Law and Buildings Department Policy. Premises is located within an R4 Zoning District.

PREMISES AFFECTED – 38 Lincoln Walk, west side Lincoln Walk 120.5’ north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

OCTOBER 17 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 19, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

302-05-BZ

APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.

SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR sections 32-14 (use), 33-121 (FAR), 101-721 & 101-41(b) (street wall height), 101-351 (curb cut), and 35-24 (setback).

PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100’ east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

82-06-BZ

APPLICANT– Eric Palatnik, P.C., for Utopia Associates, owner; Yum Brands, Inc., lessee.

SUBJECT – Application May 2, 2006 - pursuant to Z.R. §72-21 to request a variance to permit the re-development of an existing non-conforming eating and drinking establishment (Use Group 6) with an accessory drive-thru located in an R3-2 zoning district and contrary to Z.R. Section 22-00. The existing accessory drive-thru was authorized through a prior BSA approval (168-92-BZ).The proposal would create a new eating and drinking establishment (Use Group 6) with accessory drive-thru.

PREMISES AFFECTED – 172-12 Northern Boulevard, between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of Queens.

COMMUNITY BOARD # 7Q

132-06-BZ

APPLICANT– Fried Frank Harris Shriver & Jacobson, LLP, for 122 Greenwich Owner, LLC, owner.

SUBJECT – Application June 23, 2006 – Variance pursuant to Z.R. 72-21 to allow an eleven (11) story residential building with ground floor retail and community facility uses on a site zoned C6-2A and C1-6. The proposed building would contain 36 dwelling units and would be non-complying with respects to floor area, lot coverage, rear yard, height and setback, inner court, and elevator bulkhead

CALENDAR

requirements; contrary to Z.R. sections 23-145, 35-31, 23-47, 35-24, 23-633, 23-851 and 33-42.

PREMISES AFFECTED – 122-136 Greenwich Avenue, northeast corner of Greenwich Avenue and 8th Avenue, Block 618, Lot 1, Borough of Manhattan

COMMUNITY BOARD #2M

176-06-BZ

APPLICANT– Lewis E. Garfinkel, R.A., for Aryeh Adler, owner.

SUBJECT – Application August 16, 2006 - Pursuant to ZR 73-622 for the enlargement of a single family home which proposes less than the minimum rear yard, ZR 23-47, side yards, ZR 23-461, open space, ZR 23-141 and exceeds the permitted FAR, ZR 23-141. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1253 East 28th Street, east side of East 28th Street, Block 7646, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, AUGUST 22, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, June 13, 2006 as printed in the bulletin of June 22, 2006, Vol. 91, No. 25. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

565-57-BZ

APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner; Vandale Motors Incorporated, lessee.

SUBJECT – Application January 25, 2005 – Extension of Term/Amendment – to include a height change from the approved 17'-3" to 28'6" for the purpose of adding a storage mezzanine.

PREMISES AFFECTED – 5832 Broadway, a/k/a 196-198 West 239th Street, South east corner of Broadway and 239th Street, Block 3271, Lot 198, Borough of the Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Arcadius Kaszuba.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to a previously granted variance to permit modifications to the plans for an accessory convenience store, and an extension of term, which expired on December 17, 2004; and

WHEREAS, a public hearing was held on this application on August 8, 2008, after due notice by publication in *The City Record*, and then to decision on August 22, 2006; and

WHEREAS, the a Board notes that this case was scheduled for dismissal, for reasons discussed below; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Broadway and 239th Street; and

WHEREAS, the site is located within a C2-5(R7-1) zoning district, and is improved upon with an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 12, 1959 when, under the subject

calendar number, the Board granted a variance for the construction and maintenance of a gasoline service station for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; it was most recently extended on April 16, 1996 for a term of ten years from the expiration of the prior grant (December 17, 1994); and

WHEREAS, the grant was most recently amended on June 16, 1998 to permit certain site modifications, including the installation of a metal canopy, and a 24'-0" by 27'-0" enlargement of the existing accessory bays to create an attendant's booth and convenience store; and

WHEREAS, the total square footage of the enlargement was capped at 50 percent of the existing floor area, as required by ZR § 11-412; and

WHEREAS, the enlargement was never constructed; and
WHEREAS, the applicant now proposes to modify the enlargement; and

WHEREAS, specifically, the applicant proposes to raise the accessory building's height from 12'-7" to 28'-6" (the prior approval was for a height of 17'-3"); and

WHEREAS, initially, the applicant submitted plans which identified an upper level as a mezzanine; and

WHEREAS, the Board noted that the mezzanine space would be counted as zoning floor area and that, with the change, the proposed building's floor area would exceed the 50 percent cap of ZR § 11-412; and

WHEREAS, the applicant later contended that the upper level, with a 7'-6" ceiling height, was an attic and would not count as zoning floor area; and

WHEREAS, at hearing, the Board asked the applicant to secure an opinion from DOB as to how the upper level should be classified; and

WHEREAS, the applicant initially failed to secure an opinion from DOB and otherwise failed to prosecute the application, so the Board put the case on for dismissal; and

WHEREAS, the applicant ultimately obtained a Reconsideration from DOB, dated July 12, 2006, which states that the upper level, with structural head room of 7'-6", meets the criteria for attic space within the underlying R7-1 zoning district and the matter was removed from the dismissal calendar; and

WHEREAS, DOB states that a condition for attic designation is that the Certificate of Occupancy note that the space will be used only for storage; and

WHEREAS, notwithstanding the DOB opinion, at hearing, the Board asked the applicant if the full 28'-6" height was necessary to accommodate the first floor convenience store and required attic storage space; and

WHEREAS, the applicant responded that the roof's peak was not necessary, but that the building was designed with it in order to be more compatible with adjacent residential use; and

WHEREAS, the Board agrees that the pitched roof is compatible with the neighborhood and is in scale with the surrounding three- and four-story buildings; and

WHEREAS, in addition to the above-described issue, the

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applicant identified several non-compliances with the June 16, 1998 grant including discrepancies with the parking spaces, landscaping, fencing, and the location of an air pump and a hydrant; and

WHEREAS, the applicant represents that all non-compliances will be remedied within one year of this grant; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an amendment to a previously granted variance, provided that the square footage of the increase does not exceed 50 percent of existing floor area; and

WHEREAS, based upon the submitted evidence, the Board finds that the requested extension of term and amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on May 12, 1959, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from December 17, 2004, to expire on December 17, 2014 and to permit modifications to the proposed accessory convenience store *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘June 12, 2006’-(3) sheets and ‘August 14, 2006’-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 17, 2014;

THAT the attic space shall be for storage use only;

THAT the height of the attic space shall not exceed 7’-6”;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review all signage for compliance with C2-5 zoning district regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 200919355)

Adopted by the Board of Standards and Appeals, August 22, 2006.

998-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for

Ldk Realty Inc., owner.

SUBJECT – Application April 10, 2006 – Reopening for an extension of term of variance permitting accessory parking to a eating and drinking establishment (UG-6) in an R3-2 zoning district, contrary to section 22-10 of the zoning resolution. The current term expired on April 10, 2004. Staten Island Community Board 2.

PREMISES AFFECTED – 2940/4 Victory Boulevard, south side of Victory Boulevard, 25.47’ west of Saybrook Street, Block 2072, Lots 57, 65, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for an accessory parking lot to an eating and drinking establishment, which expired on April 10, 2004; and

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, on April 10, 1984, the Board granted an application to permit accessory parking to an eating and drinking establishment, on a site within R3-1 (C1-2) and R3-1 zoning districts; and

WHEREAS, the eating and drinking establishment is located within the C1-2 overlay portion of the zoning lot; and

WHEREAS, this grant was subsequently extended for a ten-year term to expire on April 10, 2004; and

WHEREAS, at hearing, the Board asked the applicant to make repairs to the sidewalk and fence; and

WHEREAS, the applicant responded that the property was about to be sold and that the new owner would make all required repairs; and

WHEREAS, the Board has determined that the evidence in the record supports a grant of the requested amendment to the prior resolution with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 10, 1984, so that as amended this portion of the resolution shall read: “to grant an extension of term for an additional term of ten years from the expiration of the prior grant, to expire on April 10, 2014; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘August 9, 2006’-(1) sheet; and *on further condition*:

THAT the fence and sidewalk will be maintained in good repair;

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THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 500828063)

Adopted by the Board of Standards and Appeals, August 22, 2006.

301-85-BZ

APPLICANT – Francise R. Angelino, Esq., for 58 East 86th Street, LLC, owner.

SUBJECT – Application April 25, 2006 – Application for an extension of term for a previously approved use variance which allowed ground floor retail at the subject premises located in a R10(PI) zoning district. In addition the application seeks a waiver of the Board's Rules and Procedures for the expiration of the term on February 11, 2006.

PREMISES AFFECTED – 58 East 86th Street, South side East 86th Street between Park and Madison Avenues, Block 1497, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for ground floor and cellar retail use, which expired on February 11, 2006; and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, on February 11, 1986, the Board granted an application to permit ground floor retail use in a five-story and penthouse mixed-use building in an R10 zoning district within the Special Park Improvement District; and

WHEREAS, subsequently, the Board granted several extensions of term and amendments, most recently on April 30, 1996 for a term of ten years, expiring on February 11, 2006; and

WHEREAS, at hearing, the Board asked the applicant to

confirm whether conditions of the previous grants, specifically that there be a separation between the residential use and commercial use in the cellar were in effect; and

WHEREAS, the Board notes that while the storage spaces are separate, the commercial and residential uses share access to the cellar; and

WHEREAS, the applicant responded that the layout was approved by the Board to satisfy the condition of the grant and a Certificate of Occupancy has been obtained based on the approved plans; and

WHEREAS, further, the applicant represents that the configuration has been maintained since the original grant; and

WHEREAS, specifically, the applicant states that there is a door with a panic bar separating the two areas in the cellar; and

WHEREAS, the Board has determined that the evidence in the record supports a grant of the requested extension of term with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, dated February 11, 1986, so that as amended this portion of the resolution shall read: “to grant an extension of term for an additional term of ten years from the expiration of the prior grant, to expire on February 11, 2016; *on condition:*

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(Alt. 468-81)

Adopted by the Board of Standards and Appeals, August 22, 2006.

197-00-BZ, Vol. II

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for SLG Graybar Sublease, LLC, owner; Equinox 44th Street Inc., lessee.

SUBJECT – Application November 2, 2005 – Pursuant to ZR §73-11 and ZR §73-36 Amendment to a previously granted Physical Culture Establishment (Equinox Fitness) for the increase of 4,527 sq. ft. in additional floor area.

PREMISES AFFECTED – 420 Lexington Avenue, 208’-4” north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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Affirmative: Chair Srinivasan, Vice-Chair Babbar, and
Commissioner Collins.....3
Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, which permitted the establishment of a physical culture establishment (PCE), to permit an increase in floor area; and

WHEREAS, a public hearing was held on this application on June 20, 2006 after due notice by publication in the *City Record*, with continued hearing on August 8, 2006, and then to decision on August 22, 2006; and

WHEREAS, the site is located on the west side of Lexington Avenue between 43rd and 44th Streets; and

WHEREAS, the zoning lot is improved with a 30-story commercial building and is within a C5-3 zoning district within the Special Midtown District; and

WHEREAS, on December 5, 2000, the Board granted a special permit under the subject calendar number to allow the establishment of a PCE within portions of the first floor and first floor mezzanine of the existing 30-story commercial building known as the Graybar Building; and

WHEREAS, the grant was for a term of ten years, to expire on December 4, 2010; and

WHEREAS, the PCE is operated as an Equinox Fitness facility; and

WHEREAS, as approved and constructed, the PCE occupies a total of 28,570 sq. ft. of floor area with 10,950 sq. ft. on the first floor, 11,750 sq. ft. on what is known as the upper first floor, and 5,870 sq. ft. on the mezzanine; and

WHEREAS, the applicant proposes to enlarge the existing PCE to include the addition of 2,248 sq. ft. on the first floor, 1,510 sq. ft. on the upper first floor, and 2,023 sq. ft. on the mezzanine level; and

WHEREAS, the proposed changes will result in a total increase of 5,781 sq. ft. of floor area occupied by the PCE from 28,570 sq. ft. to 34,351 sq. ft.; and

WHEREAS, the additional space will include a new yoga studio on the first floor, cardiovascular equipment and stretching area on the upper first floor, and new therapy and treatment areas on the mezzanine floor; and

WHEREAS, the Board concludes that the proposed amendment does not affect the prior findings for the special permit; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on December 5, 2000, so that as amended this portion of the resolution shall read: "to permit an increase in floor area occupied by the PCE on the first floor, upper first floor, and mezzanine level *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received July 25, 2006'-(5) sheets; and *on further condition*:

THAT the floor area of the PCE post-enlargement shall

not exceed 34,351 sq. ft.;

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application. No. 102688557)

Adopted by the Board of Standards and Appeals, August 22, 2006.

59-02-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a two family house located in the bed of mapped street (24th Avenue). Proposal seeks to add an additional two family dwelling in the bed of mapped street thereby making three two-family dwellings. Premises is located within an R3-2 Zoning District. Companion cases 160-02-A II and 27-06-A. PREMISES AFFECTED – 23-81 89th Street, 583.67' northeast of the corner of Astoria Boulevard and 89th Street, Block 1101, Lot 6, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carlos Aguirre.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and
Commissioner Collins.....3
Negative:.....0

0

THE RESOLUTION:

WHEREAS, this application seeks to amend the Board's previous grant made under the subject calendar number on June 18, 2002, which, pursuant to General City Law § 35, permitted a two-family home to be built in the bed of a mapped street (24th Avenue); and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, the prior grant was made in conjunction with a grant for an adjacent two-family home, under BSA Cal. No. 160-02-A II; this grant is also being amended; and

WHEREAS, the developer now also proposes an additional two-family home and has filed a new GCL

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application under BSA Cal. No. 27-06-A; and

WHEREAS, the amendment applications are necessary to reflect the further subdivision of the site to accommodate the new home, which the applicant represents will comply with applicable zoning regulations; and

WHEREAS, by letter dated July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 25, 2006, the Department of Environmental Protection (DEP) has indicated that amended Drainage Plan No. 28 (34)-3 calls for a future 12"-diameter combined sewer on 24th Avenue between 89th Street and 90th Place; and

WHEREAS, in contemplation of this future plan, DEP requires that the applicant post a security bond; the applicant must also amend the drainage plan; and

WHEREAS, in response to DEP concerns, the applicant has agreed to post a bond and amend the drainage plan; and

WHEREAS, by letter dated June 20, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the Board of Standards and Appeals waives reopens and amends the resolution, dated June 18, 2002, so that as amended this portion of the resolution shall read: "to grant an amendment to the previously approved site-plan to reflect a subdivision; *on condition* that all work and site conditions shall comply with drawings marked "Received August 17, 2006"- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT a security bond shall be posted pending DEP's approval of the amended drainage plan;

THAT DOB shall not issue any building permit prior to the receipt of the amended drainage plan;

THAT subdivision of the property shall be as approved by DOB; the Board is not approving any subdivision;

THAT all conditions indicated on prior resolutions shall remain in effect, to the extent that they are applicable;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

(DOB Application No. 402199152)

Adopted by the Board of Standards and Appeals, August 22, 2006.

160-02-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a two family dwelling in the bed of a mapped street (24th Avenue). Proposal seeks to add an additional two family dwelling in the bed of a mapped street thereby making three two family dwellings. Premises is located within an R3-2 Zoning District .Companion cases 59-02-A and 27-06-A.

PREMISES AFFECTED – 24-01 89th Street, 532.67' northeast of the corner of Astoria Boulevard and 89th Street, Block 1101, Lot 8, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carlos Aguirre.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this application seeks to amend the Board's previous grant made under the subject calendar number on June 18, 2002, which, pursuant to General City Law § 35, permitted a two-family home to be built in the bed of a mapped street (24th Avenue); and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, the prior grant was made in conjunction with a grant for an adjacent two-family home, under BSA Cal. No. 59-02-A II; this grant is also being amended; and

WHEREAS, the developer now also proposes an additional two-family home and has filed a new GCL application under BSA Cal. No. 27-06-A; and

WHEREAS, the amendment applications are necessary to reflect the further subdivision of the site to accommodate the new home, which the applicant represents will comply with applicable zoning regulations; and

WHEREAS, by letter dated July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 25, 2006, the Department of Environmental Protection (DEP) has indicated that amended Drainage Plan No. 28 (34)-3 calls for a future 12"-diameter combined sewer on 24th Avenue between 89th Street and 90th Place; and

WHEREAS, in contemplation of this future plan, DEP requires that the applicant post a security bond; the applicant must also amend the drainage plan; and

WHEREAS, in response to DEP concerns, the applicant has agreed to post a bond and amend the drainage plan; and

WHEREAS, by letter dated June 20, 2006, the

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Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the Board of Standards and Appeals waives reopens and amends the resolution, dated June 18, 2002, so that as amended this portion of the resolution shall read: "to grant an amendment to the previously approved site-plan to reflect a subdivision; *on condition* that all work and site conditions shall comply with drawings marked "Received August 17, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT a security bond shall be posted pending DEP's approval of the amended drainage plan;

THAT DOB shall not issue any building permit prior to the receipt of the amended drainage plan;

THAT subdivision of the property shall be as approved by DOB; the Board is not approving any subdivision;

THAT all conditions indicated on prior resolutions shall remain in effect, to the extent that they are applicable;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

(DOB Application No. 402199161)

Adopted by the Board of Standards and Appeals, August 22, 2006.

27-06-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Application filed under Section 35 of the General City Law to allow the construction of a two family dwelling located within the bed of a mapped street (24th Avenue). Premises is located within a R3-2 Zoning District. Companion cases 59-02-A II and 160-02-A II.

PREMISES AFFECTED – 23-83 89th Street, 561.67' northeast, the corner of Astoria Boulevard and 89th Street, Block 1101, Lot 7, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carlos Aguirre.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 13, 2006, acting on Department of Buildings Application No. 402199170 which reads, in pertinent part:

"As per site survey and information on PW-1 from Borough President's Office, portion of the site is within bed of a mapped street. Proposed construction within bed of a mapped street is contrary to GCL 35 and not permitted."; and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, this application is filed in conjunction with two applications to amend prior grants, under BSA Cal. Nos. 59-02-A II and 160-02-A II; and

WHEREAS, the prior grants permitted the construction of two two-family homes adjacent to the two-family home proposed in this application; and

WHEREAS, the amendment applications are necessary to reflect the further subdivision of the site to accommodate the new home, which the applicant represents will comply with applicable zoning regulations; and; and

WHEREAS, by letter dated July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 25, 2006, the Department of Environmental Protection (DEP) has indicated that amended Drainage Plan No. 28 (34)-3 calls for a future 12"-diameter combined sewer on 24th Avenue between 89th Street and 90th Place; and

WHEREAS, in contemplation of this future plan, DEP requires that the applicant post a security bond; the applicant must also amend the drainage plan; and

WHEREAS, in response to DEP concerns, the applicant has agreed to post a bond and amend the drainage plan; and

WHEREAS, by letter dated June 20, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 13, 2006, acting on Application No. 402199170, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 17, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT a security bond shall be posted pending DEP's approval of the amended drainage plan;

THAT DOB shall not issue any building permit prior to

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the receipt of the amended drainage plan;

THAT subdivision of the property shall be as approved by DOB; the Board is not approving any subdivision;

THAT all conditions indicated on prior resolutions shall remain in effect, to the extent that they are applicable;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2006.

413-50-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application October 12, 2005 – Pursuant to ZR §11-411 and §11-412 for an Extension of Term of a Gasoline Service Station-UG 16 (BP North America) for ten years which expired on November 18, 2005. This instant application is also for an Amendment to legalize modifications to the previously approved signage on site.

PREMISES AFFECTED – 691/703 East 149th Street, northwest corner of Jackson Avenue, Block 2623, Lot 140, Borough of The Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for continued hearing.

308-64-BZ

APPLICANT – Sheldon Lobel, P.C., for 30 East 65th Street Corporation, owner.

SUBJECT – Application June 2, 2006 – Application is a reopening for an Extension of Term/Waiver of a variance for the use of 15 surplus attended transient parking spaces within a multiple dwelling presently located in a C5-1/R8/MP zoning district. The original grant of the variance by the Board of Standards and Appeals was made pursuant to Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 747-751 Madison Avenue, a/k/a 30-38 East 65th Street, Northeast corner of East 65th Street, Block 1379, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for continued hearing.

405-71-BZ

APPLICANT – Sheldon Lobel, P.C., for Sarlanis Enterprises, LLC, owner; Amerada Hess Corporation, lessee.

SUBJECT – Application April 21, 2006 – Pursuant to ZR §73-11 for the proposed redevelopment of an existing automotive service station (Shell Station) with accessory uses (UG16) to a Gasoline Service Station (Hess) with an accessory convenience store (UG16).

PREMISES AFFECTED – 3355 East Tremont Avenue, eastern side of East Tremont Avenue at the intersection with Baisley Avenue, Block 5311, Lot 7, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

670-83-BZ

APPLICANT – Eric Palatnik, P.C., for Brett Adams and Paul Reisch, owner.

SUBJECT – Application July 10, 2006 – Pursuant to ZR §72-01 and §72-22 to Re-open and Amend the previous BSA resolution for the Extension of Term for a non-conforming UG6 (Talent Agency in the basement of a Residential Building for ten years which expired on May 22, 2005). The application is also seeking a Waiver of the Rules of Practice and Procedure for filing more than a year after the expiration of the term. The premise is located in an R8 (Special Clinton District) zoning district.

PREMISES AFFECTED – 488 West 44th Street, Between 9th and 10th Avenues, Block 1053, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

144-89-BZ, Vol. III

APPLICANT – Law Office of Howard Goldman, LLP, for 93rd Street Associates LLC, owner.

SUBJECT - This application is to reopen and to Extend the Time to Complete Construction on a 10 story residential building with retail on the ground floor which expired on December 15, 2003 and a Waiver of the Rules of Practice and Procedure. The premise is located in a C2-8(TA) zoning district.

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PREMISES AFFECTED – 1800 Second Avenue, between 93rd and 94th Street, Block 1556, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Chris Wrights.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for continued hearing.

129-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Town Sports International, Inc., owner.

SUBJECT – Application September 21, 2004 – Pursuant to ZR 73-11 to re-open and amend the BSA resolution for the Extension of Term of a Physical Culture Establishment (New York Sports Club) and an Amendment to legalize modifications to the interior layout located in a five-story and cellar commercial building. This companion to BSA Cal. 130-93-BZ.

PREMISES AFFECTED – 151-155 East 86th Street, north side of East 86th Street, 62’ east of Lexington Avenue, Block 1515, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

130-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 161 East 86th Street, LLC, owner; TSI East 86th Street, Inc., lessee.

SUBJECT – Application September 21, 2004 – Pursuant to ZR §73-11 to re-open and amend the BSA resolution for the Extension of Term of a Physical Culture Establishment (New York Sports Club) which occupies the fifth floor and mezzanine of a five-story commercial building. This Application is also seeking an Amendment to legalize the expansion in floor area of the P.C.E. into the third and fourth floors of the commercial building. This is companion to BSA Cal. 129-93-BZ.

PREMISES AFFECTED – 157-161 East 86th Street, north side of East 86th Street, 139’ of Lexington Avenue, Block 1515, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

331-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Sean Porter, owner. SUBJECT – Application April 20, 2006 – Application seeks an extension of term for a special permit under section 73-244 of the zoning resolution which permitted the operation of an eating and drinking establishment with entertainment and dancing with a capacity of more than 200 persons at the premises. In addition the application seeks a waiver of the Board's Rules and Procedure due the expiration of the term on April 20, 2005. The site is located in a C2-3/R6 zoning district.

PREMISES AFFECTED – 1426-1428 Fulton Street, Southern side of Fulton Street between Brooklyn and Kingston Avenues, Block 1863, Lot 9, 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for continued hearing.

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for George Marinello, owner; Wendy's Restaurant, lessee.

SUBJECT – Application January 12, 2006 – Pursuant to Z.R. §§72-21 and 72-22 for the extension of term for ten years for an accessory drive thru facility at an eating and drinking establishment (Wendy's) which one-year term expired February 1, 2006. An amendment is also proposed to extend the hours of operation of the accessory drive-thru facility to operate until 4 a.m. daily. The premise is located in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, between 91st Street and Remsen Avenue, Block 8108, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD#17BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Esme Trotman and Marva Straker.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for continued hearing.

149-01-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for Jane Street Realty, LLC, owner.

SUBJECT – Application June 19, 2006 – This application is to Reopen and Extend the Time to Complete Construction for the inclusion of the first and cellar floor areas of an existing six-story building for residential use and to obtain a Certificate of Occupancy which expired on June 18, 2006. The premise is located in an R6 zoning district.

PREMISES AFFECTED – 88-90 Jane Street, North side of

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West 12th Street, between Washington Street and Greenwich Street, Block 641, Lot 1001-1006, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik and Doris Diether, Community Board #2.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 19, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

361-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a two and three-story residential building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 366-05-A, decided the date hereof, which is a request for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, the Board also notes that the premises was the subject of an appeal filed on August 20, 2003 under BSA Cal. No. 263-03-A, challenging a Department of Buildings determination refusing to revoke a building permit issued under DOB Application No. 301172184 on July 21, 2003 (the “Permit”); and

WHEREAS, this appeal was dismissed as moot on July

18, 2006, since the owner worked with DOB to modify its plans to conform to the relevant issues raised by the appeal; and

WHEREAS, a public hearing was held on this application on April 25, 2006 after due notice by publication in *The City Record*, with continued hearings on June 20, 2006, July 18, 2006, and then to decision on August 22, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 7, Concerned Citizens of Greenwood Heights, and the South Slope Community Group appeared in opposition to the application; and

WHEREAS, additionally, certain neighbors, represented by counsel, opposed this application; this group of neighbors was also represented by the same counsel in BSA Cal. 263-03-A; and

WHEREAS, the applicant states that the subject premises fronts on 8th Avenue between Prospect Avenue and Windsor Place, on a lot having 18,422 sq. ft. of lot area, with frontage of approximately 63 ft. and a depth of 348 ft.; and

WHEREAS, under the Permit, the developer of the site seeks to construct a new two and three-story residential building with a cellar and basement (the “Building”); and

WHEREAS, as to the history of work at the site, demolition activities were authorized under Demolition Permit No. 301321399 on April 17, 2002, through February 11, 2003; and

WHEREAS, the Permit, which authorized excavation and construction, was in effect during an initial term of June 11, 2002 through August 13, 2002, and was renewed by DOB for eight other discrete terms; and

WHEREAS, the subject premises is currently located within an R5B zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, the Building complies with the former R5 zoning bulk parameters; specifically, the proposed Floor Area Ratio was 1.65, which was permitted; and

WHEREAS, however, on November 16, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R5B, as noted above; and

WHEREAS, because the site is now within an R5B district, the Building would not comply with the maximum FAR of 1.35; and

WHEREAS, because the Building violated this provision of the new R5B zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on November 17, 2005 for the Permit; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331; and

WHEREAS, ZR § 11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor

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development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, a threshold requirement in this application is that the Permit is valid; and

WHEREAS, as noted above, the validity of the Permit was challenged in BSA Cal. No. 263-03-A; and

WHEREAS, well prior to the Enactment Date, the owner modified plans for the Building and consequently DOB never revoked the Permit; as noted above, BSA Cal. No. 263-03-A was dismissed as moot; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant claims that excavation was completed and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, as to excavation, the applicant claims that the front portion of the site was excavated, and then backfilled; and

WHEREAS, opposition to this application submitted a series of photos that purportedly shows visible soldier piles in the front section of the site, and further shows that soil was not excavated or backfilled; and

WHEREAS, opposition also submitted a diagram showing where on the site excavation purportedly was not completed, particularly near those areas where shoring of the adjacent properties occurred; and

WHEREAS, the Board notes that the applicant refutes the relevance of the photos and diagrams, and the Board agrees that they are not conclusive; and

WHEREAS, however, based upon its review of the record and the opposition submissions, the Board finds that there is no sufficiently conclusive evidence that would allow it to determine that excavation was fully completed; and

WHEREAS, as to substantial progress on the foundation, the Board has only considered work completed as of the Enactment Date and excluded all remedial work ordered by

DOB since that date, as well as all illegal work done during stop-work orders, or work done prior to resolution of the outstanding issues related to the Permit; and

WHEREAS, the applicant represents that after the resolution of the issues related to the Permit, the owner of the site has engaged in dewatering, shoring and sheeting, and installed 164 out of the 200 anticipated piles; and

WHEREAS, however, the Board observes that no other element of the foundation system has been constructed; and

WHEREAS, specifically, the Board notes that to complete the foundation, the developer would have to install the remaining 36 piles, five mini-piles, all the footings, the foundation walls, the detention tanks, and concrete ramps and slabs; and

WHEREAS, the Board also observes that no concrete has been poured for these elements; and

WHEREAS, when the work completed is weighed against the work remaining, the Board cannot conclude that substantial progress was made on foundations; and

WHEREAS, in sum, the Board observes that the completed physical work represents a small percentage of the overall foundation construction, and does not compare to the degree of work that the Board typically reviews in a successful application under ZR § 11-331; and

WHEREAS, further, while some labor and material costs related to dewatering, shoring and sheeting might be relevant to the Board’s consideration of a common law vesting application, these items are not appropriately characterized as part of the actual foundation system for the Building; and

WHEREAS, therefore, based upon the record before it, the Board determines that substantial progress on the foundation was not made; and

WHEREAS, accordingly, because the Board cannot determine whether excavation was complete and because the Board finds that substantial progress was not made on the foundation, the applicant is not entitled to relief pursuant to ZR § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application under BSA Cal. No. 366-05-A, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the Permit; and

WHEREAS, accordingly, although the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under ZR § 11-331, this denial is not an impediment to a favorable determination of BSA Cal. No. 366-05-A.

Therefore it is Resolved that this application to renew DOB Permit No. 301172184 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, August 22, 2006.

366-05-A

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

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SUBJECT – Application December 19, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed development at the referenced premises; and

WHEREAS, this application was brought concurrently with a companion application brought under BSA Cal. No. 361-05-BZY (the “BZY Application”), decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, the Board also notes that the premises was the subject of an appeal filed on August 20, 2003 under BSA Cal. No. 263-03-A (the “Appeal”), brought by certain neighbors, represented by counsel (hereinafter, the “Neighbors”); and

WHEREAS, the substance of the Appeal was a challenge to a Department of Buildings determination refusing to revoke a building permit issued under DOB Application No. 301172184 on June 11, 2002 (the “Permit”); and

WHEREAS, the Appeal was dismissed as moot on July 18, 2006, since the applicant worked with DOB to modify its plans to conform to the relevant issues raised by the appeal; and

WHEREAS, a public hearing was held on this application on April 25, 2006 after due notice by publication in *The City Record*, with continued hearings on June 20, 2006, July 18, 2006, and then to decision on August 22, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 7, Concerned Citizens of Greenwood Heights, and the South Slope Community Group, and various elected officials appeared in opposition to the application; and

WHEREAS, additionally, the Neighbors appeared in opposition; the arguments made by the Neighbors are discussed below; and

WHEREAS, the applicant states that the subject premises fronts on 8th Avenue between Prospect Avenue and Windsor Place, on a lot having 18,422 sq. ft. of lot area, with frontage of approximately 63 ft. and a depth of 348 ft.; and

WHEREAS, the subject premises is currently located within an R5B zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, under the Permit, the developer of the site seeks to construct a new two and three-story residential building with a cellar and basement (the “Building”); and

WHEREAS, the Building complies with the former R5 zoning bulk parameters; specifically, the proposed Floor Area Ratio was 1.65, which was permitted; and

WHEREAS, however, on November 16, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R5B, as noted above; and

WHEREAS, because the site is now within an R5B district, the Building would not comply with the maximum FAR of 1.35; and

WHEREAS, since the Building violated this provision of the new R5B zoning district and the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on November 17, 2005 as to the Permit; and

WHEREAS, as to the history of work at the site, demolition activities were authorized under Demolition Permit No. 301321399 on April 17, 2002 through February 11, 2003; and

WHEREAS, the Permit, which authorized excavation and construction, was in effect during an initial term of June 11, 2002 through August 13, 2002, and was renewed by DOB for eight other discrete terms; and

WHEREAS, the applicant states that that construction proceeded as follows: (1) excavation, dewatering, shoring, and sheeting began in mid-2003; (2) stop work orders were issued by DOB, and the owner endeavored to resolve the underlying issues; (3) the Neighbors filed the Appeal in August of 2003; (4) during the course of the hearing process on the Appeal, the owner continued to work with DOB in order to come up with an acceptable plan revision; (5) in December of 2004, DOB approved revised plans, and in February of 2005, DOB renewed the Permit under these revised plans; (6) revised structural plans were approved on August 11, 2005; (7) excavation, sheeting, shoring, and dewatering resumed in September 2005, and pile installation commenced; and (8) 164 of the 200 required piles were installed as of the Enactment Date; and

WHEREAS, DOB confirmed the issuance of the stop work orders, and submitted into the record a detailed description of when the Permit was in effect, and when work under it was subject to stop-work orders; and

WHEREAS, the applicant claims that much of the difficulties experienced during construction were caused by

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political intervention and overzealous community members; and

WHEREAS, however, the Board notes that there is no evidence of malfeasance on the part of any of the opposition, and that neighbors to a construction site are entitled to ask DOB to investigate construction and plan-related concerns; and

WHEREAS, further, the applicant conceded that many of the problems experienced during development related to a contractor that the owner ultimately dismissed from the project; and

WHEREAS, the applicant also conceded that the plans under which the Permit was initially obtained reflected zoning non-compliances and were subsequently revised; and

WHEREAS, that being said, the Board agrees with the applicant that neither the initial contractor-related problems nor the plan-related problems that arose during this development project are fundamental impediments to a finding of vested rights under the common law; and

WHEREAS, the Board notes that development difficulties that require construction and plan modifications are not rare occurrences in projects of this size within the City, and that DOB enforcement action occurs fairly frequently because of them; and

WHEREAS, in sum, no development project proceeds perfectly, given the human element involved, and a common law vesting determination is not foreclosed simply because problems arise; and

WHEREAS, the Board also agrees with the applicant that the owner here endeavored to resolve the plan issues with DOB while the Appeal was pending, and also obtained a new contractor; and

WHEREAS, the Board further observes that construction on this site was contemplated and initiated more than four years prior to the rezoning; this is not the case of a developer initiating development days prior to a zoning change in an effort to beat the clock (even though it is apparent that work proceeded up to the date of the rezoning after the plan revisions were accepted by DOB); and

WHEREAS, however, while an application for a common law vesting determination may still be made under these circumstances, the Board finds that some acknowledgement of the problems with the initial construction and with the initial plans must be reflected in its analysis; and

WHEREAS, this is particularly true since the applicant concedes that some construction work had to be redone, that some was remedial work performed to address violations, and that many of the soft costs relate to the plan revisions; and

WHEREAS, thus, as discussed in more detail below, the applicant has separated the relevant work performed and expenditure incurred prior to the acceptance of the plan revision by DOB in December of 2004 versus thereafter, and made other appropriate deductions; and

WHEREAS, this ensures that the Board is not according any special exceptions in its analysis because the

owner experienced construction difficulties; and

WHEREAS, additionally, the Board has made further refinements above and beyond those made by the applicant; and

WHEREAS, the Board also notes that in its evaluation of this application, no work or expenditure relating to construction performed contrary to stop-work orders, or that was otherwise unauthorized, has been credited; and

WHEREAS, in any event, the Board notes that no violations for after-hours or weekend work were issued by DOB after December of 2004; and

WHEREAS, in fact, by carving out consideration of relevant work and expenditure prior to the approval of the plan revisions in December of 2004, the applicant has carved out any illegal work and expenditures; and

WHEREAS, notwithstanding the separation of work and expenditures, the applicant requests that the Board find that based upon the amount of work performed, and the amount of financial expenditures, including irrevocable commitments, as well as the serious economic loss the owner would face if compelled to comply with the new zoning, the owner has a vested right to continue construction and finish construction of the Building; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR § 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, as discussed above, DOB and the owner resolved all outstanding issues related to the Permit as of December 2004; the resolution of these issues led to the dismissal of the Appeal; and

WHEREAS, while on two occasions DOB issued a notice of intent to revoke the Permit, at no point was the Permit actually revoked and then reinstated; and

WHEREAS, further, on both occasions, the owner successfully engaged DOB to resolve the underlying problems; and

WHEREAS, accordingly, the Board confirms DOB's acceptance of the validity of the Permit for purposes of vesting; and

WHEREAS, assuming that a valid permit has been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change, and where serious loss will result if the owner is denied the right to proceed under the prior zoning, and; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been

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undertaken and substantial expenditures made prior to the effective date of the ordinance.”; and

WHEREAS, however, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as to substantial construction, the applicant states that after the issuance of the revised permit in December of 2004 and the re-commencement of work on the site in August of 2005, the applicant completed the installation of 164 out of 200 required piles; and

WHEREAS, the applicant also states that significant dewatering, sheeting, and shoring efforts were undertaken; and

WHEREAS, in support of this statement, the applicant has submitted pictures, invoices for labor and material, and affidavits from construction personnel; and

WHEREAS, the Board notes that dewatering, shoring, and sheeting activities were excluded from its assessment of the “substantial progress made on foundations” standard as set forth in ZR § 11-331, since they may not be reflected in the actual permanent foundation construction (with the exception of water retention tanks, which in any case have not been installed on the site yet); and

WHEREAS, however, such activities do fall under the rubric of “construction”, and thus may be properly analyzed by the Board in the context of the instant application; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of the representations, and agrees that it establishes that substantial work was performed, said work consisting of piles installation, dewatering, shoring and sheeting; and

WHEREAS, the Board’s conclusion is based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts; and

WHEREAS, specifically, the Board has reviewed the cases cited in the applicant’s December 19, 2005 submission, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to, or in excess of, the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, the Neighbors contend that substantial construction has not been performed, and offer two primary arguments in support of this contention: (1) that the amount of work completed is not substantial; and (2) that the Board must apply the statutory standard of “substantial progress on foundations” notwithstanding its distinction from the common law standard of “substantial construction”; and

WHEREAS, as to the first argument, as noted above, the Board has compared the degree of construction work completed here to that discussed in relevant cases; and

WHEREAS, the Board observes that the courts of New

York have found vesting in instances where only minimal work has been completed, as long as such work was permitted and expenditures had been made; and

WHEREAS, in particular, the Board cites to *Ortenberg v. Bales*, 229 N.Y.S. 550 (1928), where the developer had performed substantial excavation and entered into contracts, but had not performed any foundation work; *Pelham View v. Switzer*, 224 N.Y.S. 56 (1927), where only excavation was completed, and *Hasco Electric Corp. v. Dassler*, 144 N.Y.S. 857 (1955) where site clearance and excavation was complete, but no foundation construction had been commenced; and

WHEREAS, in all of these cases, the court found that the owner’s rights had vested; and

WHEREAS, while there are other cases where much more work was performed, none of them establish a bright line rule as to how much construction must be completed before a finding of “substantial construction” may be made; and

WHEREAS, further, the Board notes that the other components of the doctrine – a valid permit, economic loss and substantial expenditure – must be taken into consideration: it is not appropriate for the Board to ignore these factors and focus only on a comparison of completed construction work versus what remains, as would be the case under a statutory application; and

WHEREAS, instead, the appropriate comparison is between the amount of construction work here and that cited by other courts; and

WHEREAS, in light of such comparison, the Board can only conclude that installation of piles, dewatering, sheeting, and shoring is substantial; and

WHEREAS, in support of the second argument - that the Board must apply the statutory “substantial progress on foundations” standard in a common law vesting application - the Neighbors cite to *Ellington Construction Corp. v. Zoning Board of Appeals*, 27 NY 2d 114 (1990); and

WHEREAS, the Neighbors read *Ellington* to stand for the proposition that where the legislature has enacted a statutory vesting scheme, a zoning board must pay heed to the legislative intent as the “controlling principal”; and

WHEREAS, the Neighbors conclude that the Board must apply the “substantial progress on foundations” standard set forth in ZR § 11-331; and

WHEREAS, however, as explained by the applicant, *Ellington* does not stand for this proposition at all; and

WHEREAS, in fact, the *Ellington* court explained that the common law vesting rules should inform the application of the subject exemption period statute; this is the opposite of what the Neighbors argue; and

WHEREAS, the Board agrees that *Ellington* does not require the Board to apply the statutory standard in its review of this case; and

WHEREAS, this conclusion is borne out by the Board’s review of the *Kadin* opinion, cited above; and

WHEREAS, the *Kadin* court deals specifically with ZR § 11-30 et seq., and explicitly held that a common law remedy exists separate and apart from the statute; and

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WHEREAS, the court stated: “New York City Zoning Resolution § 11-331 does not codify or abolish the common-law doctrine of vested rights. The common-law doctrine is a broader consideration than that posited in that section of the resolution, which confines itself to whether or not certain physical stages of construction relating to excavation and the foundation have been completed. While the general standard in determining vested rights is substantial construction and substantial expenditure made prior to the effective date of the zoning amendment . . . unlike New York City Zoning Resolution § 11-331, ‘[t]here is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’”;

WHEREAS, the Board has neither the desire nor the authority to ignore such clear precedent; and

WHEREAS, the Board observes that if Ellington were applied as suggested by the Neighbors, the precedent of Kadin would be eviscerated, and a common law application would be a pointless and purposeless administrative exercise when, as occurred here, a statutory application had been made as well; and

WHEREAS, in sum, the Board rejects both of the Neighbor’s arguments as to the substantial construction finding; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant’s analysis; and

WHEREAS, in its July 25, 2006 submission, the applicant states that the total expenditure was \$4.77 million out of a budgeted \$13.5 million; and

WHEREAS, the applicant notes that this calculation does not include duplicative costs, but includes costs related to demolition, site preparation, as well as costs related to construction performed after DOB approved the plan revisions in December 2004; and

WHEREAS, this submission also provides a detailed explanation of various other soft cost deductions made to avoid counting duplicative costs and costs related to the Appeal; and

WHEREAS, the Board generally finds that the deductions made by the applicant are appropriate and satisfy the concerns of the Board that no credit be given to the expenditures made to rectify the prior construction or plans; and

WHEREAS, however, the Board notes that the \$4.77 million total includes the purchase price of the site; and

WHEREAS, the applicant states that the purchase price may properly be included in an analysis of expenditure, since it was purchased long before the proposed rezoning; and

WHEREAS, the Board agrees that there is no impediment to consideration of purchase price, but also notes that it is not required; and

WHEREAS, the Board has not analyzed purchase price in its past consideration of vested rights cases, and declines to do so here; and

WHEREAS, while it is reasonable to conclude that a purchase price is based upon the zoning in effect at the time of the purchase, the Board notes that this is not always the case,

and further observes that not all transactions are recent or arm’s-length; and

WHEREAS, thus, the Board finds that the relevance of purchase price may be difficult to ascertain in many circumstances; and

WHEREAS, the Board concludes that it better to assess expenditure in light of total development costs absent purchase price; and

WHEREAS, here, the stated acquisition price is \$1.69 million; subtracting this amount from both the expenditure total and the development costs means that the owner expended approximately \$3.08 million out of \$11.81 million; and

WHEREAS, the Board also notes that the amount of expenditure claimed includes costs related to obtaining the various mortgages on the property and the interest payments on them, which totals \$2.09 million; and

WHEREAS, the Neighbors argue that such costs should not be included, and cite to *McBride v. Town of Forestburgh*, 54 Ad 2d 346 (1976) for the proposition that expenses incurred prior to the commencement of the actual construction do not create a vested right; and

WHEREAS, the applicant responds that this an improper reading of *McBride*, and argues instead that this case only stands for the proposition that such costs alone cannot sustain a vested rights determination; and

WHEREAS, the Board agrees with the applicant, since it has previously considered pre-construction soft costs in its deliberation, the basis being the numerous court opinions holding that such soft costs can be folded into the analysis (see e.g. *Wheatland v. Esso Standard Oil Co.*, 150 N.Y.S.2d 130 (1956) and *Reichenbach v. Windward at Southampton*, 364 N.Y.S.2d 283 (1975)); and

WHEREAS, nonetheless, the Board is troubled by the inclusion of the full amount of these mortgage costs in the calculation, particularly the interest payment, since the cumulative amount of said payments has increased due to the lengthy construction process, which the applicant concedes is due in part to construction and plan-related problems; and

WHEREAS, accordingly, like acquisition cost, the Board finds it prudent to deduct these costs from both the stated expenditures and the overall development budget; and

WHEREAS, after making the relevant subtractions of this \$2.09 million cost, the Board concludes that the applicant expended approximately \$990,000 out of a total cost (minus acquisition and mortgage costs) of \$9.72 million (or approximately 10 percent); and

WHEREAS, the Board considers a million dollar expenditure substantial in and of itself, and not minimal when compared to the total development costs; and

WHEREAS, the Board’s consideration is again guided by cases considering how much expenditure is needed to vest rights under the prior zoning, as well as the expenditure percentages; and

WHEREAS, as to the serious loss that the owner would incur if required to construct the building under the current zoning, the applicant states that the loss of floor area that would result if vesting was not permitted (from an FAR of 1.65 to 1.35) would lead to the elimination of approximately

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5,527 sq. ft. of floor area; and

WHEREAS, the applicant states that this would lead to financial loss because: (1) further architectural and engineering costs would be required to reconfigure and redesign the building to account for this loss; and (2) approximately 18 percent of sellable floor area would be lost; and

WHEREAS, the Board notes that a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, here, the Board agrees that the building would have to be redesigned at significant cost, and that the prior architectural and engineering costs related to the plans accepted by DOB in December of 2004 could not be recouped; and

WHEREAS, additionally, serious loss can be substantiated by a determination that there would be diminution in income if the FAR requirement of the new zoning were imposed; and

WHEREAS, here, the Board agrees that a significant reduction in sellable floor area in a development of this size will result in a serious loss; and

WHEREAS, the Board notes that its conclusion that serious loss would occur is in consideration of the carve-out of costs related to the need to revise the plans and redo some of the construction work; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date; and

WHEREAS, the Neighbors and other opposition expressed additional concerns about various aspects of this application; and

WHEREAS, specifically, specific neighbors of the site allege that the construction on the site has caused damage to their properties, and that contrary to the assertions of the applicant, the owner has not resolved this dispute or otherwise worked towards such resolution; and

WHEREAS, while the applicant disputes these claims, the Board finds that this particular dispute is best resolved in another forum; and

WHEREAS, further, the Board again notes that given the built conditions within the City, it is not uncommon for allegations of damage to adjacent property to be made, and that such allegations, even if substantiated, would not prevent a finding of common law vested rights; and

WHEREAS, while the Board was not swayed by many of the opposition arguments, it nevertheless understands that the community and the elected officials worked diligently on the Park Slope South rezoning and that the Building does not comply with the new R5B zoning parameters; and

WHEREAS, the Board further understands that neighbors of the site are unhappy with the developer; and

WHEREAS, however, the applicant has met the test for a common law vested rights determination, and the Board has determined that the equities in this case, given the established serious loss, and the degree of work performed and expenditures made, weigh in the favor of the owner, particularly since all visible bulk parameters of the proposed building (i.e. height, yards, and setbacks) would be identical under either the R5 or the R5B zoning requirements; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant and the Neighbors and other opposition, as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 301172184, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 22, 2006.

57-06-A

APPLICANT – Willy C. Yuin, R.A., for Carmine Lacertosa, owner.

SUBJECT – Application March 27, 2006 – Proposal to construct a two story commercial building not fronting on a mapped street contrary to General City Law Section 36. Premises is located within an M1-1 Zoning District.

PREMISES AFFECTED – 141,143,145,147 Storer Avenue, South of Storer Avenue, 101.57' west of the corner of Carlin Street and Storer Avenue, Block 7311, Lot 35, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Willy Yuin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 13, 2006, acting on Department of Buildings Application No. 500821444, reads, in pertinent part:

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“The street giving access to proposed construction of a new warehouse building with office space (Use Group16D) in M1-1 Zoning District is not duly placed on the official map of the City of New York and therefore referred to Board of Standards and Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on August 22, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated June 22, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, March 13, 2006, acting on Department of Buildings Application No. 5008211444, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 27, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2006.

364-05-A & 365-05-A

APPLICANT – Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 87-30 and 87-32 167th Street, 252’ north of the corner formed by the intersection of Hillside Avenue and 167th Street, Block 9838, Lots 114 and 116, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

For Administration: Janine Gaylard, Department of Buildings.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 19, 2006, at 10 A.M., for decision, hearing closed.

161-05-A

APPLICANT – Tottenville Civic Association, for Willow Avenue Realty, Inc., owner.

SUBJECT – Application July 15, 2005 – Appeal challenging a Department of Buildings determination, dated June 12, 2005, that the subject premises is comprised of two separate zoning lots based on DOB’s interpretation of the definition of ZR 12-10” zoning lot”(c) & (e) and therefore could be developed as individual lots.

PREMISES AFFECTED – 7194, 7196 Amboy Road and 26 Joline Avenue, Block 7853, Lots 47, 74, Richmond, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Schwiekist

For Opposition: Adam Rothkrug and Robert Caneco.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 19, 2006, at 10 A.M., for decision, hearing closed.

356-05-A & 357-05-A

APPLICANT – The Law Office of Fredrick A. Becker, for Structures LLC, owner.

SUBJECT – Application December 14, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning. New zoning district is R3X as of September 15, 2005.

PREMISES AFFECTED – 150 and 152 Beach 4th Street a/k/a 1-70 Beach 4th Street, south of Seagirt Avenue, Block 15607, Lot 62 and 63, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra Altman, Michael Stern and Matt Probkowitz.

For Opposition: Nathan Cohen, Tracy Conroy, Susan Wagner and Alanna Wagner.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

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Negative:.....0
ACTION OF THE BOARD – Laid over to September
12, 2006, at 10 A.M., for decision, hearing closed.

12, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

332-05-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for LMC Custom Homes, owner.

SUBJECT – Application November 17, 2005 – Application to permit the construction of two one-family dwellings within the bed of a mapped street (Enfield Place). Contrary to General City Law Section 35. Premises is located in an R4 Zoning district.

PREMISES AFFECTED – 72 Summit Avenue, Block 951, Lot p/o 19 (tent 25 and 27), Borough of Staten Island

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for continued hearing.

Adjourned: A.M.

333-05-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for LMC Custom Homes, owner.

SUBJECT – Application November 17, 2005 – Application to permit the construction of two one family dwellings within the bed of a mapped street (Enfield Place). Contrary to General City Law Section 35. Premises is located in an R4 Zoning district.

PREMISES AFFECTED – 74 Summit Avenue, Block 951, Lot p/o 19 (tent 25 & 27), Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for continued hearing.

346-05-A

APPLICANT – Joseph A. Sherry, for Abdo Alkaifi, owner.

SUBJECT – Application December 6, 2005 – Application to permit an enlargement of a commercial structure located partially in the bed of a mapped street (Beach 52nd Street) contrary to Section 35 of the General City Law. Premises is located within the C8-1 Zoning district.

PREMISES AFFECTED – 51-17 Rockaway Beach Boulevard, S/S 0' East of Beach 52nd Street, Block 15857, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 22, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar and
Commissioner Collins.

ZONING CALENDAR

286-04-BZ & 287-04-BZ

CEQR #05-BSA-029Q & CEQR #05-BSA-030Q

APPLICANT – Rothkrug Rothkrug Weinberg & Spector,
LLP for Pei-Yu Zhong, owner.

SUBJECT – Application August 18, 2004 – Under Z.R. §72-
21 to permit the proposed one family dwelling, without the
required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED –

85-78 Santiago Street, west side, 11.74' south of
McLaughlin Avenue, Block 10503, Part of Lot 13
(tent.#13), Borough of Queens.

85-82 Santiago Street, west side, 177' south of
McLaughlin Avenue, Block 10503, Part of Lot 13
(tent.#15), Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar, and
Commissioner Collins.....3

THE RESOLUTION:

WHEREAS, the decision of the Borough
Commissioner, dated July 20, 2004, acting on Department of
Buildings Application No. 401599392, reads in pertinent
part:

“Establishment of such amendment now creates a
non-complying zoning lot contrary to Z.R. sections
23-32, for lot width and 23-46, for side yards.”; and

WHEREAS, a public hearing was held on this
application on April 5, 2005 after due publication in *The City
Record*, with continued hearings on January 31, 2006, March
14, 2006, April 25, 2006, June 13, 2006, July 25, 2006, and
then to decision on August 22, 2006; and

WHEREAS, the premises and surrounding area had a
site and neighborhood examination by a committee of the
Board, consisting of Chair Srinivasan, Vice-Chair Babbar,
and Commissioner Collins; and

WHEREAS, these two applications, filed under Z.R. §
72-21, to permit, on an existing zoning lot within an R1-2
zoning district, the subdivision of this lot into two non-
complying zoning lots, the maintenance of an existing one-
family dwelling on one of the non-complying lots, and the
proposed construction of a one-family dwelling on the second
non-complying lot, which is contrary to Z.R. §§ 22-32 and
23-46; and

WHEREAS, the site is currently represented on the
City’s tax map as lot 13; and

WHEREAS, however, as discussed below, this lot is
comprised of two tentative tax lots (tent. lot 13 and the
adjacent tent. lot 15, collectively referred to as the “Site”);
and

WHEREAS, Cal. No. 286-04-BZ relates to lot 13 (85-
78 Santiago), and Cal No. 287-04-BZ relates to lot 15 (85-82
Santiago); and

WHEREAS, the Site is 134.6 ft. by 165.2 ft., with a total
area of 11,475 sq. ft., located on the west side of Santiago
Street, south of McLaughlin Avenue; and

WHEREAS, the Site was originally comprised of two
independent tax lots, lots 13 and 16, which were in joint
ownership; and

WHEREAS, in 1947, lot 16 was developed with a two-
story single-family dwelling; and

WHEREAS, lot 13 was adjacent and to the north of lot
16, and was developed at some point with a garage and pool,
accessory to the single-family dwelling; and

WHEREAS, on an unknown date, these two historical
lots were merged into a single tax lot (the current lot 13), and
the existing improvements remained on the Site; and

WHEREAS, the applicant concedes that as of 1961, the
entirety of the Site was in common ownership; thus, lot 13
was then and is now a single zoning lot; and

WHEREAS, the applicant states that in August of 2002,
the current owner purchased the Site, purportedly with the
intention of subdividing the garage/pool portion from the
house portion, so that a new home could be constructed on
the garage/pool portion; and

WHEREAS, in anticipation of the subdivision, the
owner apparently first went to the City’s Department of
Finance to obtain preliminary approval for a tax lot
subdivision in August 2002; a DOF form (called an RP 604)
dated August 2, 2002, indicates the proposed contours of the
two new tax lots (lot 15 – developed with the existing home,
and lot 13 – developed with the garage/pool); and

WHEREAS, DOB’s Buildings Information System
(“BIS”) indicates that a formal subdivision application was
made in October of 2002, under Job No. 401547938; and

WHEREAS, BIS reveals that a revised RP 604 was
submitted to DOB in late November of 2002; and

WHEREAS, the subdivision application under Job No.
401547938 was approved by DOB on December 4, 2002; and

WHEREAS, a New Building application, made under
Job No. 401599392, for the new home on lot 13, was filed on
January 15, 2003; and

WHEREAS, the applicant has submitted an affidavit
from the architect that handled the subdivision, which
indicates that the New Building application was subject to a
full DOB examination “from January through September
2003”; and

WHEREAS, BIS indicates that some initial objections
as to the application were raised by DOB on January 27,
2003; and

WHEREAS, however, these objections were not
resolved, and no plan approval or permit had been issued as

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of June 13, 2003, on which date the zoning of the site changed from an R2 zoning district to an R1-2 district; and

WHEREAS, because of the rezoning, both of the proposed tentative tax lots would be non-compliant as to lot width and frontage; and

WHEREAS, nonetheless, the owner managed to obtain plan approvals and permits from DOB even after the rezoning; and

WHEREAS, specifically, the above-referenced New Building application was approved on August 29, 2003; and

WHEREAS, additionally, on September 19, 2003, DOB issued permits for foundation, earthwork and fence under Job No. 401599392, and excavation commenced; and

WHEREAS, however, the applicant concedes that the approval and permits were erroneously obtained, because the proposed new home on lot 13 would not comply with R1-2 district regulations concerning frontage and side yards, and the existing home on lot 15 would not comply with frontage, lot area, and side yard requirements; and

WHEREAS, DOB discovered this error and issued a ten-day letter of intent to revoke on October 20, 2003, followed by a revocation of the erroneously issued permits on October 31, 2003; and

WHEREAS, the applicant states that the owner entered into a contract to sell the existing home on lot 13 after the permits were erroneously issued; and

WHEREAS, that applicant alleges that when the permits were revoked, the owner was unable to obtain a release of the contract from the prospective purchaser of lot 13, and following litigation, a judge ordered specific performance and the owner was compelled to convey the home this purchaser; and

WHEREAS, the applicant represents that the subdivision was not recognized by DOB after the rezoning because the owner never legally transferred the property prior to the rezoning date; as discussed below, DOB does not confirm this representation; and

WHEREAS, the applicant then filed a variance application as to lot 15 in 2004, but because it appeared that an appeal would be taken of the court's specific performance order, the Board removed the case from calendar; and

WHEREAS, the owner did not pursue an appeal of the specific performance order, and the two instant companion applications were filed; and

WHEREAS, the Queens Borough President, Community Board No. 8, Queens, New York State Assemblyman Mark S. Weprin, New York State Senator Frank Padavan, and the Holliswood Civic Association recommends disapproval of this application; and

WHEREAS, the applicant initially alleged that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Site in strict compliance with underlying district regulations: (1) there is unique history with respect to development of the site; and (2) the site is unusually large for the area to be developed with only one house; and

WHEREAS, as to the unique history argument, the applicant asserts that the Site was initially developed with a

house only on a portion of the site because the original owner always intended to develop the other portion of the site as a separate zoning lot; and

WHEREAS, the applicant claims that unlike the other smaller lots in the area, that are developed with one home situated in the middle of the lot, the Site was developed with one home off to the side; the applicant claims that this supports his argument that the history of the lot makes the Site unique; and

WHEREAS, however, this "history of development" does not speak to any issue inherent in the site that prevents the applicant from developing it, or maintaining it, in accordance with the current zoning; and

WHEREAS, further, the actual history of development on the Site belies the applicant's claim: by the applicant's own admission, the Site was occupied for many years as a single-family home with an accessory garage and pool, and remains viable for such use;

WHEREAS, moreover, the more recent history of development of this site is not a legitimate unique factor for a variance application because it concerns the personal and legal problems of the owner rather than any unique features of the Site; and

WHEREAS, the Board notes that it is established under New York case law that uniqueness and unnecessary hardship must relate to the land and not to the personal problems of the landowner; and

WHEREAS, as to lot size, the Board does not consider the Site's size to be grounds for uniqueness, since it does not cause any hardship whatsoever; and

WHEREAS, further, while the applicant attempted to connect the size of the lot to its ability to sustain two dwellings under the prior zoning, this does not mean that it currently suffers a hardship under the existing zoning; and

WHEREAS, the Board notes that the option exists to enlarge the existing home in order to utilize available floor area generated by the size of the Site, or to use the part of the Site not currently developed for accessory uses to the existing home (such as a pool or garage); and

WHEREAS, accordingly, the Board rejects the applicant's contention that the history of development on the Site or its size constitutes unique physical conditions that create practical difficulties or unnecessary hardship; and

WHEREAS, the applicant also suggested two other arguments that do not relate to any physical condition of the Site: (1) that the owner relied in good faith on DOB's erroneous foundation permit in entering into a contract of sale; and (2) that tentative lots 13 and 15 became separate zoning lots of record as of the date of DOB's approval of the Subdivision Improvement application (December 4, 2002); and

WHEREAS, the Board has considered the applicant's purported reliance on the erroneously issued DOB foundation permit – pulled by the owner's representative *after* the rezoning – and whether, if reliance was proven, this could provide the basis for a grant of a variance; and

WHEREAS, as a threshold matter, the Board observes that it is the burden of the owner and his or her filing

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representative (here, an architect) to properly ascertain the zoning district in which the property is located when applying to DOB for a permit; and

WHEREAS, a filing representative should be charged with constructive notice of the zoning district designation in which the development site is located, especially since a change in the district would likely have a substantive effect on a development proposal; and

WHEREAS, thus, an owner (through his or her representative) cannot be said to have acted in good faith if it did not complete its own diligence in preparing its application before DOB; and

WHEREAS, an opinion of the Appellate Division, Second Department, supports this position: in analyzing whether the petitioners acted in “good faith” in relying upon a permit, the court determined that because the petitioners did not exercise reasonable diligence to ascertain what the pertinent zoning provisions were, they did not meet the “good faith” standard and were not entitled to rely on the permit. See *In the matter of D’Allesandro v. Board of Zoning and Appeals for the Village of Westbury*, 577 N.Y.S.2d 79 (2nd Dept 1991); and

WHEREAS, further, the Board notes that none of the cases discussing good faith reliance concerns a situation where, as here, the fact pattern is simply that a permit was contrary to zoning was erroneously issued after a rezoning; and

WHEREAS, the Board is aware that the seminal, and most controlling case, on the good faith reliance doctrine is the Court of Appeals decision *In the Matter of Jayne Estates, Inc. v. Raynor*, 22 N.Y.2d 417 (1968); and

WHEREAS, this case, in the Board’s view, involved a set facts so entirely dissimilar from those presented by the applicant that any good faith reliance claim here is untenable; and

WHEREAS, in *Jayne Estates*, the Court found that that the expenditures the developer made in reliance on the invalid permit were properly considered in the variance application because the developer acted in good faith acted and because there was no reasonable basis with which to charge *Jayne* with constructive notice (unlike the instant situation) that it was building contrary to the zoning ordinance; and

WHEREAS, further, the developer was stymied repeatedly by various municipal entities as attempts were made to proceed under the issued permit; it was not the case that the developer or owner failed to note a zoning change, as occurred here; and

WHEREAS, the Court, in supporting its decision, cited to cases it considered analogous to the situation in *Jayne Estates*, including vested rights cases where the municipal officials deliberately delayed the processing of an application and misled and hindered the applicant in order to prevent the accrual of any rights; the obvious common thread between these cases is that bad and misleading acts on the part of those responsible for issuing permits and applying zoning provisions should not prevent a landowner from receiving relief; and

WHEREAS, the actions of the governmental bodies in *Jayne Estates* were particularly egregious, including: (1) an intentional act by the Village Board of Trustees to prohibit construction when the zoning ordinance permitted the construction; (2) a grant by the Zoning Board of Appeals that contained conditions that were impossible for *Jayne* to comply with while developing the property; (3) a lengthy negotiation/settlement process with the Trustees and the Planning Board that was later found to be beyond the authority of both the Trustees and the Planning Board; and (4) approval by a reviewing court of the settlement, which upon further judicial review was determined to be improperly authorized; and

WHEREAS, in reliance on these actions of the town government and the court, the developer purchased additional land and spent money building the development; and

WHEREAS, the applicant here can only argue that the legally permissible revocation of a building permit– which was invalid when issued – is the comparable “bad act” on the part of the government that induced reliance by the owner; and

WHEREAS, however, reliance on the issuance of a building permit alone is not equivalent to the numerous assurances the developer in *Jayne Estates* received from various governmental bodies and the court; and

WHEREAS, further, the Board notes that none of the lower court cases examining the good faith reliance doctrine explicitly hold that a reliance claim can sustain a variance application without a further finding of actual uniqueness and hardship; rather, the courts maintain that zoning boards may consider financial expenditures made in good faith reliance upon a permit issuance in conjunction with other established hardship costs; and

WHEREAS, here, even assuming that good faith reliance may consist simply of actions taken after issuance of an invalid permit, the applicant has not submitted any evidence of actual hardship based on physical uniqueness (as discussed above), nor has there been any financial evidence of expenditures made following the issuance of the foundation permit; and

WHEREAS, thus, the Board rejects the applicant’s good faith reliance argument; and

WHEREAS, the final argument made by the applicant is that the two tentative tax lots actually were separate zoning lots upon DOB’s approval of the subdivision application; the applicant would then be in a position to argue that the lot area and frontage deficiencies were pre-existing conditions, and that a variance application could be predicated on that basis; and

WHEREAS, the applicant was referred to DOB for an assessment of this theory; and

WHEREAS, in a letter to the applicant dated August 18, 2006, the Queens Borough Commissioner stated that the approval of the subdivision application did not create separate zoning lots; and

WHEREAS, instead, DOB stated that “A zoning lot is formed at the time of eligibility for a lawful new building permit, alteration permit or certificate of occupancy.”; and

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WHEREAS, DOB opined that since no plan approvals for the New Building application had been obtained prior to the rezoning, no new zoning lot was created; and

WHEREAS, the Board defers to DOB's opinion without passing upon it; and

WHEREAS, in sum, the Board finds that none of the arguments made by the applicant as to the uniqueness of the site or good faith reliance have any merit; and

WHEREAS, accordingly, the Board finds that the finding set forth at Z.R. § 72-21(a) is not supported by substantial evidence or other data; and

WHEREAS, because the application fails to meet the finding set forth at Z.R. § 72-21(a), it follows that the finding set forth at Z.R. § 72-21(b) is also not met; and

WHEREAS, however, even if the applicant had established to the Board's satisfaction that the site was afflicted with actual unique physical conditions, the applicant has not submitted any evidence in support of the (b) finding other than cursory statements that developing the lot in strict conformity with the zoning resolution would not result in a reasonable return for the owners; and

WHEREAS, additionally, Z.R. § 72-21(d) provides that the practical difficulties or unnecessary hardship claimed as a ground for the variance must not have been created by the owner of the zoning lot; and

WHEREAS, the Board finds that any potential hardship faced by the owner is self-created, since the owner had constructive notice of the zoning change, and retains the ability to negotiate with the purchaser and reach an agreement that will allow either party to build a new home, or enlarge the existing home in compliance with the currently applicable zoning regulations, utilizing available floor area; and

WHEREAS, because the Board finds that the two applications fail to meet the findings set forth at Z.R. §§ 72-21(a), (b) and (d), they must be denied.

Therefore it is Resolved that the decision of the Borough Commissioner, dated July 20, 2004, acting on Department of Buildings Application No. 401599392, is sustained and the subject applications are hereby denied.

Adopted by the Board of Standards and Appeals, August 22, 2006.

364-04-BZ

APPLICANT – Sheldon Lobel, P.C., for New Lots Avenue, LLC, owner.

SUBJECT – Application November 18, 2004 – pursuant to Z.R. §72-21 to permit the proposed construction of a one-story commercial building, for use as three retail stores, Use Group 6, located within a residential district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 690/702 New Lots Avenue, south side, between Jerome and Warwick Streets, Block 4310, Lots 5, 7, 8 and 10, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

Adopted by the Board of Standards and Appeals, August 22, 2006.

310-05-A & 311-05-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Bernard F. Dowd, owner.

SUBJECT – Application October 19, 2005 – Special Permit pursuant to Z.R. Section 73-27 to legalize the existing second floor use in an existing funeral establishment. The site is located in a C4-2 zoning district. A case (310-05-A) was filed with the BZ case on 10/19/05 since the C of O lapsed for the prior "A" case (232-52-A).

PREMISES AFFECTED – 165-18/28 Hillside Avenue, Northeast corner Hillside Avenue and Merrick Boulevard, Block 9816, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 17, 2005, acting on Application No. 402082376 reads:

“A commercial building located in C4-2 zoning district under BSA Calendar No. 232-52-A with a permitted use for a funeral parlor has expired. It has since been referred to the Board of Standards and Appeals for further action.”; and

WHEREAS, this is an application to permit the use of a frame building for commercial use; and

WHEREAS, the Board reviewed a companion case, under BSA Cal. No. 311-05-BZ, to legalize the use of the second floor for the funeral establishment, concurrently; and

WHEREAS, a public hearing was held on this application on June 13, 2006, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2006, and then to decision on August 22, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 12, Queens, and the Queens Borough President recommend approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the

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conditions set forth below; and

WHEREAS, the subject site is a 21,122 sq. ft. lot located on the northeast corner of Hillside Avenue and Merrick Boulevard; and

WHEREAS, the site is improved upon with a 2 ½-story building which operates as a lawful non-conforming funeral establishment, with a total floor area of 7,911 sq. ft.; and

WHEREAS, on July 22, 1952, under BSA Cal. No. 232-52-A, the Board granted an application to permit the use of a frame building for commercial purposes, the funeral establishment, for a term of ten years; and

WHEREAS, subsequently, the term of this grant was extended at various times until 1978; and

WHEREAS, the applicant represents that, prior to 2002, the second floor was converted from living quarters to funeral chapels and other funeral establishment facilities; and

WHEREAS, initially, the applicant proposed to legalize the use of two chapels, a lounge, a lobby, storage space, and restrooms on the second floor; and

WHEREAS, at hearing, the Board raised a number of concerns regarding fire safety with regard to the use of the second floor; and

WHEREAS, specifically, the Board requested that the applicant provide a second means of egress from the second floor; and

WHEREAS, in response, the applicant revised plans to show a new exterior staircase from the second floor; and

WHEREAS, additionally, the applicant noted that the existing windows in Viewing Chapel E provide access to the roof and provide another means of egress; and

WHEREAS, the Board also suggested that the applicant provide fireproof metal doors between the different rooms on the second floor; and

WHEREAS, the Board expressed concern about egress from the second chapel; and

WHEREAS, in response to the Board's concern about egress from the second chapel, the applicant revised plans to show that it would no longer be used for chapel space; and

WHEREAS, the applicant represents that the space initially designated for the second chapel will be dedicated to storage space; and

WHEREAS, the applicant revised plans to add self-closing fireproof doors between Viewing Chapel E and the lobby and the large storage area and the lobby on the second floor; and

WHEREAS, the applicant revised plans to incorporate the additional fire safety measures.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 17, 2005, acting on Application No. 402082376, is modified by the power vested in the Board, and that this appeal is granted to permit the building on the premises to be occupied as a commercial funeral home, as indicated on revised drawings filed with the application marked "Received July 6, 2006"-(6) sheets and "August 8, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition:*

THAT the term of this grant shall be for ten years from the date of the grant, expiring on August 22, 2016;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all signage shall comply with C4-2 zoning district regulations;

THAT all fire protection measures, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2006.

351-05-BZ

CEQR #06-BSA-041K

APPLICANT – The Law Offices of Howard Goldman/Emily Simons, Esq., for Atlas Packaging Solutions Holding Co., owner.

SUBJECT – Application December 14, 2005 – Variance ZR §72-21 to allow a proposed four (4) story residential building containing eight (8) dwelling units in an M2-1 Zoning District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 146 Conover Street, south facing block of Conover Street, between King and Sullivan Streets, Block front of Conover Street, between King and Sullivan Streets. Block 554, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Emily Simons.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 6, 2005, acting on Department of Buildings Application No. 302050394, reads in pertinent part:

“The proposed residential building located in an M2-1 Zoning District is contrary to the use provisions of Section 42-00 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an M2-1 zoning district, a four-story

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residential development with six dwelling units, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in the *City Record*, with a continued hearing on July 11, 2006, and then to decision on August 22, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 6, Brooklyn, the South Brooklyn Industrial Development Corporation (“SBDC”), the Mayor’s Office of Industrial & Manufacturing Businesses (“IMB”), and the New York Industrial Retention Network (“NYIRN”) all provided testimony in opposition to the application; the arguments of these entities are discussed below; and

WHEREAS, the subject premises is a 2,500 sq. ft. lot, with a width of 25 feet and a depth of 100 feet, located on the south side of Conover Street between King and Sullivan Streets, in the Red Hook neighborhood of Brooklyn; and

WHEREAS, the site is adjacent to residential buildings on either side; one of the buildings is occupied, though the other is not and may have lost its non-conforming status; and

WHEREAS, the applicant states that the site was formerly improved upon with a four-story residential building, which existed on the site until it was demolished around 1980; the site has been vacant since then, and has never been occupied by an industrial or manufacturing use; and

WHEREAS, the applicant proposes to construct a four-story residential building, with six units, a street wall and total height of 50’-0”, a total residential floor area of 5,350 sq. ft., a total residential FAR of 2.14, and a rear yard of 45’-0”; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site’s small size does not allow for the creation of a viable conforming industrial building with floor plates sufficient for modern manufacturing uses; and (2) the site is vacant and adjacent to residential buildings; and

WHEREAS, the Board agrees that the size of the site inhibits the development of a conforming manufacturing building, because the floor plates in a conforming building would be of insufficient size and impractical layout, and therefore not suitable for a modern conforming user; and

WHEREAS, the Board notes that an inability to create a viable industrial building because of small lot size is a well-established unique physical condition that can lead to unnecessary hardship, and has been approved as such (upon submission of substantial evidence) in many other applications; and

WHEREAS, as to the adjacency to residential buildings, the Board acknowledges that this may not always be, in of itself, a basis for a claim of unnecessary hardship, but it can often contribute to a hardship claim, since the site is typically less desirable and therefore less marketable; and

WHEREAS, however, the Board asked the applicant to reinforce the uniqueness of this site; specifically, the Board was concerned that the subject lot dimensions might reflect a common condition in the surrounding area; and

WHEREAS, in response, the applicant has submitted a 400-ft. radius diagram that shows that of the seven other similarly-sized sites within the radius, all are occupied with warehouses and garage-type structures that were primarily built between 1920 and 1961, when economic conditions permitted small-scale industrial development; and

WHEREAS, further, within the radius, most of the conforming uses occupy sites much larger than the subject lot; and

WHEREAS, the applicant concludes that this diagram and related analysis supports the contention that no recent new construction of industrial buildings has occurred on such small lots in this area of Red Hook in the last 40 years; and

WHEREAS, the Board confirmed on its site and neighborhood visit that the site is one of the few similarly-sized vacant sites within the subject zoning district; and

WHEREAS, the applicant notes that there are no other vacant lots within the 400-ft. radius which have residential buildings on both sides (which, as noted above, further compromises the site’s marketability and feasibility for conforming use); and

WHEREAS, further, the radius diagram illustrates that on the subject block, the site is the only site out of the seven sites that is vacant and adjacent to residential buildings; and

WHEREAS, thus, unlike many other similarly sized sites, the subject lot would have to be developed with a new industrial building, which would have inefficient floor plates; further, any industrial user would have at least one active residential neighbor; and

WHEREAS, accordingly, the Board finds that certain of the aforementioned unique physical conditions, namely, the site’s small size and its location between two historically residential buildings (one of which is occupied), create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following as-of-right scenario: a conforming one-story manufacturing building; and

WHEREAS, the applicant concluded that such a scenario would not result in a reasonable return; and

WHEREAS, further, the applicant provided evidence to show that there are a number of vacant manufacturing buildings within the 400-ft. radius that would be more marketable than the subject lot, which would need to be cleared and developed with a building since it is vacant; and

WHEREAS, the applicant also states that the owner’s marketing attempts for conforming use – including print ads and listings with brokers - were unsuccessful; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will

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provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant submitted a detailed land use survey and map, as well as a parking survey, prepared by a consultant; and

WHEREAS, the map covers an approximately ten block area around the subject site, and includes both manufacturing and residential zoning districts; and

WHEREAS, the map illustrates that of the 165 lots in the study area, 34 (21 percent) are vacant, 34 (21 percent) are occupied by warehouse, storage, or commercial uses, 16 (ten percent) are occupied by parking/garage uses, five (less than one percent) are occupied by community facilities, and 76 (46 percent) are occupied by residential uses; and

WHEREAS, the map further illustrates that the site is one-half block from a major community facility that, in part, provides housing for individuals with special needs and contains 36 rooming units; and

WHEREAS, the Board also observes that the subject block-front contains two occupied residential buildings; the lot directly adjacent to the subject site (Block 554, Lot 28) contains eight dwelling units and the lot at the northwest corner of Conover and Sullivan streets (Block 554, Lot 34) contains a residential building with three dwelling units; and

WHEREAS, there is also an R5 zoning district across Conover Street and Sullivan Street beginning at the adjacent block; and

WHEREAS, the applicant concludes, and the Board agrees, that the area is best characterized as mixed-use, given both the proximity of residential units and the fact that 46 percent of the lots in the study area are in residential use; and

WHEREAS, additionally, based upon a utilization survey of on-street parking, the consultant concludes that there is available parking in the neighborhood sufficient to accommodate the parking needs generated by the proposed residential development; and

WHEREAS, the study also reflected that curb cuts into sites occupied by conforming uses are sufficiently sized that vehicles entering and exiting such sites would not be impacted by the additional personal auto parking generated by the proposed development; and

WHEREAS, based upon the above, the Board finds that the introduction of six dwelling units (which reflects a reduction from the initially proposed eight) on this street will not impact nearby conforming uses nor change the character of the neighborhood; and

WHEREAS, as to bulk, the applicant represents that the proposed building's roof line will match the height of the two adjacent residential buildings; and

WHEREAS, the Board observes that both adjacent buildings are four stories and that most of the residential buildings in the area have similar heights; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board notes that the case is predicated on the small size of the lot and its adjacency to buildings with active or historical residential use, and the inability to develop the site in way that would be both viable and useful to a modern conforming user; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as to minimum variance, the Board notes that the applicant was directed to review smaller scale buildings than that proposed; specifically, the applicant conducted an analysis of a building comparable to what could be constructed in an R5 zoning district, as well as an R6 height-factor building; and

WHEREAS, the applicant responded that these scenarios resulted in buildings that either were not feasible or were not in character with the neighborhood (the majority of residential buildings are streetwall buildings); and

WHEREAS, however, as noted above, the applicant reduced the unit count to six, as opposed to the originally proposed eight, and matched up the building height with the two adjacent buildings; and

WHEREAS, finally, the Board also directed the applicant to eliminate the cellar from the proposal, in order to avoid costs associated with foundation removal; and

WHEREAS, in conclusion, because the applicant only proposes a use change that will facilitate the construction of a modest residential building comparable in bulk and height to the adjacent and other area buildings, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, as mentioned above, the Community Board, SBIDC, IMB and NYIRN opposed this application; and

WHEREAS, the Community Board alleges that the site is not unique, that conforming manufacturing use is viable, that residential use would negatively impact nearby conforming uses, and that any hardship was self-created; and

WHEREAS, SBIDC opposed the application both on the required findings, the broad policy considerations stated by IMB (discussed below), as well as on the basis that the marketing attempts were not valid; and

WHEREAS, in particular, SBIDC states that the owner did not utilize its resources for finding a conforming user, and that its calls made in response to the print ad were not returned; and

WHEREAS, however, the owner of the site contests this and states that SBIDC did not refer any potential industrial users to him; and

WHEREAS, further, the Board notes that while marketing is often a supporting element of a case, it is not a required one,

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especially since the feasibility study referenced above conclusively establishes that the site is not capable of sustaining viable conforming development due to its unique physical conditions; and

WHEREAS, IMB, in its initial submission, opposed the application on the basis that the site is located within the City-designated Southwest Brooklyn Industrial Business Zone and the State's Southwest Brooklyn Empire Zone, and that if the site were used for residential purposes, the Red Hook neighborhood would lose additional industrial space, compounding the cumulative loss of space over the last decade; and

WHEREAS, IMB also stated that manufacturing users have general concerns about not being able to compete with commercial and residential uses, and that there is no reason why the site could not be developed for industrial activity; and

WHEREAS, in a second submission, dated August 21, 2006, IMB expanded upon these concerns; and

WHEREAS, in its August 21 submission, IMB makes the following arguments: (1) the variance if granted would alter the essential character of the neighborhood; (2) the site is not uniquely different from other sites in the Red Hook neighborhood, and is not too small to be developed with a viable industrial building; (3) any hardship is self-created; and (4) the variance is not the minimum variance, since the Board could grant additional floor area in order to allow for a more viable development; and

WHEREAS, as to the character argument, IMB again cites to the policy considerations inherent to the creation of the IBZs; and

WHEREAS, the Board is aware of these policy considerations and recognizes that the boundaries of the subject IBZ were carefully considered based upon significant research and analysis; and

WHEREAS, the Board also understands the mission of IMB; and

WHEREAS, however, the Board's review of variance applications is site-specific, and its analysis of the character finding is based upon a variety of factors that may not correspond to the broader economic concerns inherent to the IBZs; and

WHEREAS, in this case, the record contains no evidence of business displacement or elimination of jobs, and no property with a history of viable industrial use is irretrievably lost; and

WHEREAS, the Board also notes that the subject lot, at 2,500 sq. ft, represents 0.003 percent of the total property area within the subject IBZ (64,686,600 sq. ft, or 1,485 acres); and

WHEREAS, moreover, the Board is unable to find any support for the position that the conversion of a 2,500 sq. ft. site that historically has *only* been occupied by residential use, which is between two historically residential buildings, and which is within a broader area where only 32 percent of the developed lots are occupied by conforming uses, is sufficiently contrary to any public policy such that the requested use variance should not be granted; and

WHEREAS, in sum, where, as here, an applicant for a variance has met the required findings, unsupported assertions

concerning the impact that a proposal might have on general economic policies cannot overcome the Board's responsibility under the law to grant the indicated relief; and

WHEREAS, IMB also states that encroaching residential development within the IBZ would exacerbate potential conflicts between residential and industrial uses; and

WHEREAS, the Board disagrees that the proposed residential development of this site will change the essential character of the community, which is a mix of both residential and conforming uses; and

WHEREAS, this was established by the expanded land use study submitted by the applicant, as well as the Board's own site visit; and

WHEREAS, additionally, the Board carefully considered the potential impact that the proposed residential building would have on conforming uses in the area, and determined that there would not be any adverse impacts; and

WHEREAS, as to the uniqueness argument, IMB cites to two separate exhibits in support of the contention that the site can sustain viable industrial development; and

WHEREAS, the first of the exhibits is a purported list of 16 industrial businesses within the Red Hook neighborhood on lots of comparable size; the source of the data is NYIRN; and

WHEREAS, in response, the applicant notes that based on its review of New York Property Research database records and Sanborn tax maps, it appears that three of these 16 sites are larger than the subject site (63 Commerce Street – 20,000 sq. ft.; 160 Conover Street – 12,500 sq. ft.; and 115 Wolcott Street – 4,000 sq. ft.); and

WHEREAS, the applicant also notes that its review of the Real Estate Board of New York database indicates that six of the 16 were developed with industrial buildings in the 1930s; and

WHEREAS, further, the applicant states that its review of DOB's Building Information System ("BIS") records revealed that three of the 16 are used for garage purposes rather than traditional industrial purposes; and

WHEREAS, the Board has reviewed the supporting documentation and agrees with the applicant's observations; and

WHEREAS, additionally, the Board observes that the presence of long-standing businesses on comparably-sized lots does not necessarily mean that an historically vacant lot can be feasibly developed; and

WHEREAS, finally, the Board observes that to meet the finding set forth at ZR § 72-21(a), a site does not have to be the only site in the vicinity that suffers from a particular hardship; and

WHEREAS, instead, the Board must find that the hardship condition cannot be so prevalent that if variances granted to every identically situated lot, the character of the neighborhood would significantly change (see *Douglaston Civic Ass'n, Inc. v. Klein*, 435 N.Y.S.2d 705 (1980)); and

WHEREAS, thus, merely citing to other lots in the area that appear to be similar without further analysis is insufficient; and

WHEREAS, here, the applicant has conclusively established that the subject site is one of the very few in the area

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that is vacant, adjacent to an occupied residential building, and 2,500 sq. ft. in size; and

WHEREAS, IMB's second exhibit is a purported list of 14 new industrial buildings constructed in the last 6 years on comparably-sized lots within Brooklyn; the source data was again provided by NYIRN; and

WHEREAS, the applicant responds that, based upon its review of BIS and Sanborn maps, 10 of the 14 lots are actually part of larger merged lots, ranging in size from 4,000 to 11,000 sq. ft.; and

WHEREAS, BIS reveals that two of the lots (279 Starr Street and 267 44th Street) are comparably-sized, and appear to be in the process of being developed, but no certificates of occupancy have yet been issued; and

WHEREAS, BIS also reveals that one of the lots (188 Alabama Avenue) does not appear to be in the process of any development, as no job applications have been filed and no permits have been issued; and

WHEREAS, the applicant argues that only one of the 14 sites is 2,500 sq. ft. and has been recently developed, with issuance of a certificate of occupancy; the CO indicates that the site was developed for vehicle storage, not with a typical industrial use; and

WHEREAS, as with the prior list, the Board has reviewed the supporting documentation and agrees with the applicant's observations; and

WHEREAS, however, even assuming that every one of the 14 lots on the second list were single, 2,500 sq. ft. lots that had been developed in the last five years with lawful industrial buildings and with issuance of certificates of occupancy, the Board would not consider this relevant; and

WHEREAS, none of the lots are in the subject neighborhood, and there is no evidence that they suffer the additional hardship of adjacency to a residential building; and

WHEREAS, further, the Board finds it difficult to characterize 14 developments on small lots within the entire borough of Brooklyn in the past five years a significant amount, and the Board respectfully disagrees with IMB's assertion that this reflects a "sufficient, if not healthy, demand for smaller industrial spaces with a footprint similar to the property"; in fact, it suggests the opposite; and

WHEREAS, additionally, the Board does not find it relevant that a site *could* be developed with an industrial building, should an owner decide that it might be convenient to do so for business reasons notwithstanding the viability of such a building on the general market; and

WHEREAS, the important consideration is whether a site that suffers unique physical conditions can be developed for a conforming use and still provide the owner a reasonable return based upon dollar and cents proof as reflected in a feasibility study; and

WHEREAS, here, IMB has not offered any argument as to why the Board should not credit the expert feasibility analysis undertaken on behalf of the property owner, which concluded that a reasonable rate of return could not be achieved from development of an industrial building on the site; and

WHEREAS, as noted above, the Board reviewed the feasibility analysis, and found that it is based upon proper methodology and that the assumptions presented in it are reasonable; and

WHEREAS, based upon the above, the Board disagrees with IMB's assertion that the site does not suffer a unique hardship; and

WHEREAS, as to the contention that any hardship on the site is self-created, IMB states that the loss of the prior lawful non-conforming status as a residential lot is the equivalent of a self-created hardship; and

WHEREAS, in response, the applicant states the hardship on which the case is predicated is not the loss of its non-conforming status, but rather its small size, and location between two residential buildings; and

WHEREAS, the Board notes that these hardships would exist even if the site had always been zoned exclusively for manufacturing; the loss of the former non-conforming status of the site is irrelevant to any hardship claim; and

WHEREAS, as part of its self-created hardship argument, IMB also cites to the alleged deficiencies in the marketing of the site; and

WHEREAS, specifically, IMB notes that while print ads and broker listings were pursued, no signage was ever placed on the site indicating that it was available for industrial development; and

WHEREAS, while the relevance of marketing has been addressed above, the Board firsts notes that any deficiencies in marketing, even if proven, would not be properly characterized as a self-created hardship; rather, this would potentially pertain to the reasonable return finding; and

WHEREAS, further, the Board considers the print ads and the broker listings more than a sufficient substitute for signage; and

WHEREAS, finally, IMB contends that the owner failed to protest the inclusion of this property within the subject IBZ when the boundaries were being formalized; and

WHEREAS, the Board does not consider this relevant; and

WHEREAS, as to the final argument – that the proposed use change is not the minimum variance – IMB alleges that an FAR waiver for a larger than permitted industrial/commercial structure would achieve leasing rates of a minimum of \$12 per square foot, which would generate "additional revenue to the property owner"; and

WHEREAS, the Board agrees that such a scenario was not requested of the applicant, but notes that IMB's assertion of a particular per square foot leasing rate is pure speculation, since IMB did not provide any documentation whatsoever to support this theory; and

WHEREAS, in particular, IMB does not direct the Board's attention to any examples of a over-built manufacturing building on a 2,500 sq. ft. site in the area that illustrates the proposition that additional floor area adds intrinsic value to the site sufficient to overcome very small lot size and adjacency to residential uses; and

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WHEREAS, NYIRN argues that residential development is incompatible with the industrial businesses in the area, including three solid waste transfer stations that are within two blocks of the site; and

WHEREAS, NYIRN further argues that there is heavy truck traffic on the streets during the day, picking up garbage and making deliveries; and

WHEREAS, however, the Board concludes that the introduction of six units on Conover Street, in the subject mixed-use neighborhood, will not have a significant effect on vehicle circulation or conforming uses; and

WHEREAS, NYIRN also contests the per square foot assumption made by the applicant in its feasibility study, and suggests that a higher value should be used; and

WHEREAS, NYIRN further suggests that the upper floor of a conforming building could be used for office or artisan space, and that the minimum variance would be an additional floor of such uses; and

WHEREAS, the Board notes, however, that NYIRN, like IMB, did not provide any evidence in support of these contentions; instead, they are speculative; and

WHEREAS, the Board also notes that NYIRN makes similar assertions as IMB as to uniqueness and the effect of the IBZ, with which, for reasons stated above, the Board does not concur; and

WHEREAS, in conclusion, the Board finds that none of the opposition arguments have any merit, and that the applicant has established with substantial evidence that the requested variance should be granted; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA041K, dated December 14, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) an April, 2006 Environmental Assessment Statement; (2) a July, 2005 Phase II Workplan; (3) a July, 2005 Health and Safety Plan; and (4) a March 17, 2006 "noise attenuation commitment letter"; and

WHEREAS, these submissions specifically examined the proposed action for potential noise, air quality and hazardous materials impacts; and

WHEREAS, a Restrictive Declaration to address potential hazardous materials impacts was executed on March 20, 2006 for subsequent recordation; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a lot within an M2-1 zoning district, a four-story residential development with six dwelling units, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 18, 2006"-eight (8) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: four stories; six dwelling units; a residential and total FAR of 2.14; a street wall and total height of 50'-0"; a 45'-0" rear yard; and lot coverage of 55 percent;

THAT the all dwelling units shall provide double glazed windows with good sealing properties, and an alternate means of ventilation (central air conditioning or air conditioning sleeves), to provide 35-dBA noise attenuation in order to ensure an acceptable interior noise environment of 45-dBA;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2006.

32-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, by Steven M. Sinacori, for Manhattan College, owner.

SUBJECT – Application February 28, 2006 – Special permits pursuant to Z.R. §§ 73-482 and 73-49 to allow an accessory group parking facility in excess of 150 spaces and to allow roof-top parking. Zoning variance pursuant to Z.R. Section 72-21 is also proposed to allow proposed parking facility to violate applicable height and setback requirements of Z.R. Section 33-431. Premises is located within an R6/C2-3 zoning district.

PREMISES AFFECTED – 5935 Broadway, east side of

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Broadway between 242nd Street and Manhattan College Parkway, Block 5776, Lot 632, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated February 21, 2006, acting on Department of Buildings Application No. 200905075, reads, in pertinent part:

- “1. Proposed accessory parking garage in excess of 150 spaces with rooftop parking requires Special Permit from the BSA pursuant to ZR §§ 73-482 and 73-49.
2. Proposed height and setback for garage building is contrary to ZR § 33-431.”; and

WHEREAS, this is an application under ZR §§ 72-21, 73-482, and 73-49 to permit an accessory parking facility to an existing community facility in excess of 150 spaces and to allow roof-top parking, in a structure which does not comply with the zoning requirements for height and setback, contrary to ZR § 33-431; and

WHEREAS, the application is brought on behalf of the Manhattan College (the “College”), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application with certain conditions discussed below; and

WHEREAS, certain neighbors provided testimony in opposition to the proposed facility, citing concerns about pollution, access to light and air, and security; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, the site is located on the east side of Broadway between 242nd Street and Manhattan College Parkway; and

WHEREAS, the subject zoning lot is within an R6/C2-3 zoning district as rezoned on July 19, 2006; and

WHEREAS, the subject site is an 84,694 sq. ft. zoning lot, improved upon with a 225-space accessory parking lot for the College, and a one-story 11,350 sq. ft. maintenance and storage building; and

WHEREAS, the applicant proposes to replace the existing parking lot and building with a 365,000 sq. ft. structure with the following uses: (1) 715 parking spaces accessory to the College

campus across Manhattan College Parkway; (2) an as-of-right 55,000 sq. ft. supermarket with accessory parking of approximately 186 cars; and (3) a pedestrian bridge connection of the proposed accessory parking lot to the College’s campus; and

WHEREAS, the applicant states that a substantial change in grade between Manhattan College Parkway and Broadway enables a logical separation of the supermarket use and the College accessory parking use; the supermarket will be on the first and second floors and front on Broadway and the College parking facility will begin at the third floor and front on Manhattan College Parkway; and

WHEREAS, as to the mix of not-for-profit and for-profit elements of the proposed building, the applicant states that the first level, occupied by the supermarket, and the accessory parking immediately above it, will form a separate tax lot and condominium unit of the building; the condominium unit will be owned by the College and leased to the supermarket under a long-term lease; and

WHEREAS, the remainder of the parking structure, consisting of five College accessory parking levels, including the roof, will constitute a second tax lot and condominium unit owned and used by the College; and

WHEREAS, the applicant represents that it has structured the development of and income produced by the site so as not to exceed the thresholds permitted in order to maintain not-for-profit status; and

WHEREAS, the applicant states that the following are the programmatic space needs of the College, which have led to the development proposal and which necessitate the requested special permits and waivers: (1) a need to consolidate and centralize all accessory parking, and eliminate the multiple sites currently occupied by smaller and less efficient parking lots so that they can be redeveloped with academic facilities; and (2) a need to satisfy student and faculty parking needs while alleviating the parking burden on neighborhood streets; and

WHEREAS, in order to meet these needs, the applicant seeks the following: (1) a special permit pursuant to ZR § 73-482, to permit an accessory group parking facility of 715 spaces for College use (another 186 spaces will be accessory to the supermarket); (2) a special permit pursuant to ZR § 73-49, to permit roof parking in order to accommodate the requisite number of spaces with the allowable FAR on the site; and (3) a variance pursuant to ZR § 72-21 for height and setback, to allow the floorplates of the garage to most efficiently accommodate the needed parking; and

WHEREAS, pursuant to ZR § 73-482, the Board may permit accessory group parking facilities in excess of 150 spaces in commercial or manufacturing districts, provided the following findings are made: (1) that there is adequate reservoir space to accommodate the vehicular entrance of either ten automobiles or five percent to of the total parking spaces provided, whichever is greater; and (2) the streets providing access to such use are adequate to accommodate the traffic generated; and

WHEREAS, the applicant represents that the proposed 901-parking space facility will provide 46 reservoir spaces – 28

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spaces on the entrance/exit ramp from Broadway and 18 spaces on the entrance/exit ramp from Manhattan College Parkway; and

WHEREAS, the Board notes that 46 reservoir spaces is five percent of the total number of spaces to be provided, which satisfies the requirement; and

WHEREAS, the applicant represents the streets providing access to the proposed accessory garage are adequate to handle traffic generated by the garage; and

WHEREAS, specifically, the applicant asserts that Broadway and Manhattan College Parkway are major streets and that the traffic projections of the Van Cortlandt College EAS (CEQR No. 06DCP033X), submitted into the record, indicate that no significant adverse impacts to traffic and parking will occur due to the proposed project; and

WHEREAS, further, Broadway in the vicinity of the site is a two-way north-south boulevard with a mall and a width of approximately 100 feet with two travel lanes and parking in the northbound direction and three main travel lanes with a 32-foot wide service lane and parking in the southbound direction; and

WHEREAS, Manhattan College Parkway is a two-way street that extends from Broadway to the Henry Hudson Parkway and provides access to Manhattan College facilities; it has an average roadway width of 30 feet with one travel lane in each direction; and

WHEREAS, the applicant represents that the proposed garage will have two points of access, including a new signalized entrance and exit on Broadway between West 240th and West 242nd Streets and an unsignalized entrance and exit on Manhattan College Parkway; and

WHEREAS, upon reviewing the traffic study and site access plan, the Board agrees that the street network can accommodate the incremental traffic generated by the proposed garage; and

WHEREAS, based upon the above, the Board concludes that the findings required under § 73-482 have been met; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit accessory off-site parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the proposed garage is designed and located so as not to impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, specifically, the applicant represents that the 44,246 sq. ft., 112-space roof parking level above the sixth floor is not visible from the street level on either Broadway or Manhattan College Parkway; and

WHEREAS, further, the ramps to the roof level will be located in the College of the garage away from its perimeter; and

WHEREAS, the applicant represents that all parking levels for the garage, including the roof level, are located as far east as possible on the Broadway side of the zoning lot so as to maximize the distance from residential buildings above the garage to the west; and

WHEREAS, at hearing the Board asked the applicant about the hours of operation for the roof parking; and

WHEREAS, the applicant responded that the hours of access to the roof would be limited to 7:00 a.m. to 10:00 p.m., daily, and until 11:30 p.m. during special events at the college approximately ten times a year, and that no access would be granted past those hours; and

WHEREAS, additionally, the Board asked the applicant about the lighting plan for the roof parking; and

WHEREAS, the applicant responded that minimal lighting for safety purposes would be on through the night, but that such lighting would be directed down and that there would be a 3'-6" parapet to screen the adjacent residential building; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-49 have been met; and

WHEREAS, the applicant states that the variance request under ZR § 72-21 is necessitated in part by the programmatic needs of the College and in part by the irregular grade change at the site; and

WHEREAS, as to programmatic needs, the applicant again notes that the proposed structure is necessary because the College seeks to alleviate current space constraints and make more efficient use of space campus-wide in order to promote academic programming; and

WHEREAS, more importantly, the applicant states that the site suffers from a steep slope condition, which creates an unnecessary hardship in developing the structure with the amount of parking allowable through the special permits in compliance with applicable height and setback regulations; and

WHEREAS, specifically, the applicant represents that there is a 31'-6" change in grade from the Broadway frontage to the Manhattan College Parkway frontage; and

WHEREAS, the applicant represents that, as a result of the slope, the proposed facility is less than 59 feet above mean-average curb level on Manhattan College Parkway, but the streetwall and total height are 76'-10" above mean-average curb level on the Broadway frontage; and

WHEREAS, in the R6/C2-3 zoning district, the maximum permitted street wall height is 60 feet or four stories, whichever is less, with an initial setback of 15 feet; and

WHEREAS, the applicant represents the height and setback waivers are necessary to create efficient floorplates for the parking facility based on layout and construction methods considerations; and

WHEREAS, specifically, the applicant represents that a complying building, with the setback, would not allow for the all of the necessary parking spaces; and

WHEREAS, the Board notes that a setback would create inefficient floorplates and require an additional floor of parking in order to recapture the lost floor area and parking spaces; and

WHEREAS, accordingly, based upon the above, the Board finds that the slope condition affecting the site, when considered in conjunction with the programmatic needs of the College, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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WHEREAS, since the College is a non-profit educational institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant represents that adjacent residential properties that face the zoning lot, will not be able to view any non-complying conditions; and

WHEREAS, further, the applicant represents that the portion of the facility that requires the height and setback waiver is along the Broadway frontage, which has an elevated train station facing the building; and

WHEREAS, the Board notes that the proposed project would help relieve the impact the College's insufficient parking has on the surrounding neighborhood streets; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the College could occur on the existing lot given its unique topographical conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested height and setback waiver is the minimum waiver necessary to accommodate the current and projected needs while alleviating the parking problems and freeing up campus space for educational facilities; and

WHEREAS, the applicant performed an analysis that demonstrated that, due to the lot's slope, the garage would have to be altered substantially, and the parking reduced considerably, without the requested waiver; and

WHEREAS, the Board notes that the applicant will locate height and setback encroachment on Broadway away from the residential buildings so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the College to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the City Planning Commission (CPC), as Lead Agency, has conducted an environmental review (CEQR No. 06DCP033X) for the subject actions before the BSA; and of related actions approved by the CPC. The CPC related actions are as follows:

- o An amendment to the Zoning Map to change an

M1-1 district and an R6 district to an R6/C2-3 district;

- o A revocable consent, from the New York City Department of Transportation (DOT), to construct a pedestrian bridge over Manhattan College Parkway, connecting the proposed development to the Manhattan College Campus.

WHEREAS, the CPC issued a Negative Declaration for CEQR No. 06DCP033X, on March 6, 2006;

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings application under ZR §§ 72-21, 73-482, and 73- to permit an accessory parking facility to an existing community facility in excess of 150 spaces and to allow roof-top parking, in a structure which does not comply with the zoning requirements for height and setback, contrary to ZR § 33-431, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 16, 2006"- fifteen (15) sheets; and *on further condition*:

THAT the total building floor area of the new building shall not exceed 365,000 sq. ft., as illustrated on the BSA-approved plans;

THAT the total number of parking spaces shall not exceed 715 in the parking lot accessory to the College and 186 in the parking lot accessory to the supermarket;

THAT the hours of operation of the roof level shall be from 7:00 a.m. to 10:00 p.m., daily, and until 11:30 p.m. during special events approximately ten times a year;

THAT a total of 46 reservoir spaces shall be provided at the entrances of the parking garage;

THAT all lighting on the roof shall be directed down and away from adjacent residential use;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2006.

40-06-BZ
CEQR #06-BSA-062M

APPLICANT – The Law Office of Fredrick A. Becker, for Ten Hanover LLC c/o The Witkoff Group, owner; Plus One

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Holding Incorporated, lessee.

SUBJECT – Application March 8, 2006 – Special Permit pursuant to Z.R. §73-36 to allow the operation of a Physical Culture Establishment (PCE) on the cellar and sub-cellar levels in a 21-story mixed-use building. The PCE membership will be limited to employees of Goldman Sachs and residents of the subject premises in a space formerly occupied and used as an accessory PCE (1998 to 2004) for members of Goldman Sachs. The premises is located in a C5-5 (LM) zoning district. The proposal requests a waiver of Z.R. Section 32-00 (Use Regulations).

PREMISES AFFECTED – 10 Hanover Square, easterly block front of Hanover Square between Water Street and Pearl Street, Block 31, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 28, 2006, acting on Department of Buildings Application No. 103940906, reads, in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right in (C5-5) zoning district and it is contrary to ZR (ZR 32-10).”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-5 zoning district in the Special Lower Manhattan District (LM), the conversion of an accessory exercise facility located on the first floor, cellar and sub-cellar levels of an existing 21-story mixed-use building to a physical culture establishment (PCE), contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in *The City Record*, and then to decision on August 22, 2006; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the east side of Hanover Square, between Water Street and Pearl Street; and

WHEREAS, the PCE operated from 1998 to 2004 as an accessory facility to the commercial building then occupied by Goldman Sachs; and

WHEREAS, the special permit is required because the building has since been converted to residential use and the current proposal is for the private facility to be used by

building residents and Goldman Sachs employees who now work in other buildings; and

WHEREAS, the PCE occupies a total of 28,041 sq. ft. of floor area, with 1,229 sq. ft. on the first floor, 8,972 sq. ft. in the cellar level, and 17,840 sq. ft. in the sub-cellar; and

WHEREAS, the applicant represents that massages are offered at the PCE and that there are fitness and exercise facilities; and

WHEREAS, the PCE has the following hours of operation: Monday through Thursday, 5:30 a.m. to 10:30 p.m., Friday, 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

WHEREAS, as to sound attenuation, the applicant represents that there have not been any noise complaints; and

WHEREAS, further, the applicant notes that the first floor is occupied by the lobby and commercial uses and provides a buffer between the PCE on the lower levels and the residential use on the upper floors; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the conversion of the facility to a PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA062M, dated June 1, 2006; and

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the continued

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operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-5 (LM) zoning district, the conversion of an accessory exercise facility located on the first floor, cellar and sub-cellar levels of an existing 21-story mixed-use building to a PCE, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 23, 2006”-(3) sheets and “Received March 8, 2006”-(2) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on August 22, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Thursday, 5:30 a.m. to 10:30 p.m., Friday, 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

THAT all massages shall be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2006.

66-06-BZ

APPLICANT – Slater & Beckerman, LLP, for Vaughn College of Aeronautics and Technology, owner.

SUBJECT – Application April 13, 2006 – Zoning variance pursuant Z.R. § 72-21 – Application is filed by the Vaughn College of Aeronautics and Technology and seeks a variance to permit the construction of a new three story college dormitory that does not conform to the use regulations of the

M1-1 zoning district.

PREMISES AFFECTED – 22-40 90th Street, east side of 90th Street the corner formed by the intersection of 23rd Avenue, Block 1064, Lot 100, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carole Slater.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 7, 2006, acting on Department of Buildings Application No. 402309809, reads, in pertinent part:

“Proposed Use Group 3A College Dormitory in M1-1 zoning district is contrary to ZR 42-10 of Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a three-story college dormitory, which is contrary to ZR § 42-10; and

WHEREAS, the application is brought on behalf of Vaughn College of Aeronautics and Technology (the “College”), a nonprofit college; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, City Council Member Hiram Monserrate provided testimony in support of the application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, the site is located on the east side of 90th Street, between 23rd Avenue and Ditmars Boulevard; and

WHEREAS, the subject site is a 123,720 sq. ft. (2.8 acres) zoning lot improved upon with a 2,625 sq. ft. one-story building occupied by an engine observation building at the rear of the site as well as a parking lot that accommodates approximately 150 cars; and

WHEREAS, the building and the parking lot will remain; and

WHEREAS, the subject site and the adjacent Lot 2 comprise the College campus which has a total lot area of approximately seven acres; and

WHEREAS, the main academic and administrative building, along with certain accessory uses, is located on Lot 2; and

WHEREAS, the applicant proposes to construct a three-

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story, 200-bed residence hall (UG 3) for its students, with a floor area of 46,435 sq. ft.; and

WHEREAS, the development of the dormitory complies with regulations applicable to community facilities in the adjacent R3-2 zoning district, except for the building height and the width of one of the two required side yards; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the College, which offers degrees in management, engineering, technology, and aviation studies in addition to an air traffic control program for the Federal Aviation Administration; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the College, which necessitate the requested waivers: (1) a significant increase in attendance over the past 74 years; (2) the development of the academic program; (3) a need to draw students from outside the immediate area; and (4) a need to remain competitive by providing affordable student housing with easy access to campus facilities; and

WHEREAS, as to attendance, the applicant states that the College now serves 800 students in its non-aircraft maintenance based academic programs, an increase from 50 in 1996; and

WHEREAS, the applicant submitted evidence that the academic programming has continually evolved in step with advances in aviation and engineering throughout its history, while also developing its non-aviation based programs; and

WHEREAS, specifically, the applicant asserts that during the past ten years, the College has evolved from a trade school with a focus on aviation maintenance into an institution offering engineering, management, aviation, and other academic programming to students in pursuit of Associate and Bachelor of Science degrees; and

WHEREAS, further, the College is one of only 13 schools in the country to offer such programming including an air traffic control program for the Federal Aviation Administration; and

WHEREAS, the applicant represents that, due to its unique program, it can now attract students from beyond the immediate area; and

WHEREAS, the applicant represents that a large number of its students are from Queens and Brooklyn because it is difficult to recruit students from outside the area without being able to offer student housing; and

WHEREAS, the applicant further represents that there are no available sites near the campus where a dormitory would be permitted; and

WHEREAS, finally, the applicant notes that the large open space on the 2.8 acre lot provides amply space for the proposed facility while allowing students to live on campus and close to the airport; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the construction of a dormitory in close proximity to its existing campus is necessary to address the College's needs, given the current limitations; and

WHEREAS, further, the Board notes that the site is

integrated with and relates to the existing College buildings in a way that makes it an efficient and appropriate location for the dormitory, in terms of proximity; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site, when considered in conjunction with the programmatic needs of the College, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the College is a non-profit educational institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant represents that adjacent sites are developed with low to medium density institutional and commercial buildings, including two- and three-story College buildings, a six-story hotel, a two-story church, and a parking lot for a rental car facility; and

WHEREAS, the Board agrees that the proposed three-story building is compatible with the surrounding neighborhood in terms of bulk; and

WHEREAS, the Board also notes that the non-complying side yard is an existing condition resulting from the location of the engine observation building on the site; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the College could occur due to the lack of suitable available as of right sites in proximity to the campus; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the College; and

WHEREAS, the Board notes that, although the applicant will maintain one four ft. side yard, which is non-complying under the adjacent R3-2 zoning district regulations, a 15 ft. front yard and a 104 ft. side yard will be provided; and

WHEREAS, additionally, the Board notes that the proposed building will have an FAR of 0.396, while an FAR of 1.0 is permitted in both the underlying M1-1 zoning district and the adjacent R3-2 zoning district; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the College

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to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA074Q, dated April 13, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: an April, 2006 Environmental Assessment Statement and April, 2006 Phase I, Phase II and Phase III Environmental Site Assessment Reports; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, noise and air quality impacts; and

WHEREAS, a Restrictive Declaration was executed on August 7, 2006 and submitted to be recorded on August 16, 2006 for the subject property to address hazardous materials concerns; and

WHEREAS, the Board notes that there are certain requirements as to noise attenuation which must be met; and these mitigation measures are described in detail on an approved plan sheet "Proposed Site Plan - Drawing L-100" dated August 18, 2006; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a three-story college dormitory, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they

apply to the objections above noted, filed with this application marked "Received April 13, 2006"- seven (6) sheets and "Received August 18, 2006" – one (1) sheet; and *on further condition*:

THAT the total building floor area of the new building shall not exceed 46,435 sq. ft. (0.396 FAR), as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2006.

290-02-BZ thru 314-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner. (Taipei Court)

SUBJECT – Application October 24, 2002 – under Z.R. §72-21 – to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district's equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners' association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-01/03/05/07/09/11/13/17/19/15/21/21/23/25/27/29/31/33/35/20/22/24/26/28/30/32/34 Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for continued hearing.

374-03-BZ thru 376-03-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner.

SUBJECT – Application December 2, 2003 – Under Z.R.

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§72-21 – to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district's equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners' association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-17/19/36-A Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for continued hearing.

194-04-BZ thru 199-04-BZ

APPLICANT – Agusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179), Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178), Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177), Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176), Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175), Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Mitchell Ross, Senator Samson, Francisco Marig and Markie Sampson.

For Opposition: Robinson Hernandez.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

47-05-BZ

APPLICANT – Cozin O'Connor, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 – under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for deferred decision.

204-05-BZ

APPLICANT – Harold Weinberg, for Amalia Dweck, owner. SUBJECT – Application August 26, 2005 – Pursuant to ZR §73-622, Special Permit for an enlargement of a two-family residence which increases the degree of non-compliance for floor area, open space, lot coverage and side yards is contrary to ZR §23-141 and §23-461. The application also proposed an as-of-right change from a one-family dwelling to a two-family dwelling.

PREMISES AFFECTED – 2211 Avenue T, north side, 57' east of East 22nd Street, between East 22nd and East 23rd Streets, Block 7301, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for decision, hearing closed.

288-05-BZ

APPLICANT – Harold Weinberg, P.E., for Maria Musacchio, owner.

SUBJECT – Application September 16, 2005 – Pursuant to ZR §73-622 Special Permit for an In-Part Legalization to a single family home which exceeds the allowable floor area ratio and is less than the allowable open space, 23-141 and exceeds the maximum allowable permimeter wall height, 23-631. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 1060 82nd Street, South side, 197'3" west of 11th Avenue, between 10th Avenue, Block 6012, Lot 30, Borough of Brooklyn.

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COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Harold Weinberg, Philip Musacchio, Finy Sarila and other.

For Opposition: Adriano Santini, Violet Santini and Thomas A. Delorazzo.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for continued hearing.

313-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Douglas Brenner and Ian Kinniburgh, owners.

SUBJECT – Application October 20, 2005 – under Z.R. §72-21 to allow a proposed enlargement of an existing residential building located in C6-1 and R7-2 districts to violate applicable rear yard regulations; contrary to Section 23-47.

PREMISES AFFECTED – 26 East 2nd Street, Block 458, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Richard Lobel, Robert Pauls and Howard Chin.

For Opposition: Stuart Beckerman.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

336-05-BZ

APPLICANT – Stuart A. Klein, Esq., for Rotunda Realty Corporation, owner; CPM Enterprises, LLC, lessee.

SUBJECT – Application November 23, 2005 – Special permit application under Z.R. §73-36 to permit a Physical Culture Establishment in the subject building, occupying the third and a portion of the second floor. The premise is located in M1-5B zoning district. The proposal is contrary to Z.R. §42-00.

PREMISES AFFECTED – 495 Broadway, a/k/a 66-68 Mercer Street, west side of Broadway between Spring and Broome Streets, Block 484, Lot 24, Borough of Manhattan

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein and Doris Diether, Community Board #2.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for decision, hearing closed.

10-06-BZ

APPLICANT – Harold Weinberg, for David Cohen, owner.

SUBJECT – Application January 12, 2006 – Pursuant to ZR 73-622 Special Permit for the enlargement of a single family residence which increase the degree of non-compliance for lot coverage and side yards (23-141 & 23-48), exceeds the

maximum permitted floor area (23-141) and proposes less than the minimum rear yard (23-47). The premise is located in an R4 zoning district.

PREMISES AFFECTED – 2251 East 12th Street, east side 410' south of Avenue V between Avenue V and Gravesend Neck Road, Block 7372, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for decision, hearing closed.

56-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Suri Blatt and Steven Blatt, owner.

SUBJECT – Application March 27, 2006 – Pursuant to ZR 73-622 Special Permit for the enlargement of an existing one family residence which exceeds the maximum allowed floor area and decreases the minimum allowed open space as per ZR 23-141 and has less than the minimum required rear yard as per ZR 23-47.

PREMISES AFFECTED – 1060 East 24th Street, East 24th Street between Avenue J and Avenue K, Block 7606, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteierman.

ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for continued hearing.

72-06-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for SL Green Realty Corporation, owner; Equinox One Park Avenue, Incorporated, lessee.

SUBJECT – Application April 19, 2006 – Special Permit pursuant to Z.R. §73-36 to allow the proposed PCE within a portion of the first floor and the entire second floor of the existing 18-story commercial building. The premise is located in a C5-3 and C6-1 zoning district. The proposal is contrary to Z.R. Section 32-10.

PREMISES AFFECTED – 1 Park Avenue, a/k/a 101/17 East 32nd Street and East 33rd Street, East south of Park Avenue between E. 32nd Street and East 33rd Street, Block 888, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

MINUTES

Negative:.....0
ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for decision, hearing closed.

94-06-BZ

APPLICANT – Dennis D. Dell'Angelo, for David & Rosa Soibelman, owner.

SUBJECT – Application May 12, 2006 – Pursuant to ZR 73-622 – Special Permit to construct a three story enlargement to an existing single family home creating non-complying conditions contrary to ZR 23-141 for open space and floor area ratio, ZR 23-47 less than the required rear yard and ZR 23-48 for less than the required side yards. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1221 East 29th Street, East side of East 29th Street, 150' South of Avenue L, Block 7647, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis Dell' Angelo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for decision, hearing closed.

113-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Columbia University in the City of New York, lessee.

SUBJECT – Application June 6, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed 13-story academic building to be constructed on an existing university campus (Columbia University). The project requires lot coverage and height and setback waivers and is contrary to Z.R. Sections 24-11 and 24-522.

PREMISES AFFECTED – 3030 Broadway, Broadway, Amsterdam Avenue, West 116th and West 120th Streets, Block 1973, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Gary Tarnoff, Will Paxton and Walter Sorbb.

For Opposition: Carolyn Kent.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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213-06-A

72-19 Grand Avenue, Northwest corner of Grand Avenue and 72nd Place., Block 2506, Lot 96 (tent.), Borough of **Queens, Community Board: 5**. General City Law Section 35 - To allow the construction of a new structure in the bed of a mapped street.

214-06-BZ

196-25 Hillside Avenue, North west corner of 197th Street, Block 10509, Lot 265, Borough of **Queens, Community Board: 8**. (SPECIAL PERMIT) 11-411 and 73-01(d) - Propose to reinstate the variance that was granted under calendar # 673-53-BZ since it has lapsed.

215-06-BZ

202-06 Hillside Avenue, South east corner of Hillside Avenue and 202nd Street., Block 10496, Lot 52, Borough of **Queens, Community Board: 12**. (SPECIAL PERMIT) 11-40 - For the re-establishment and extension of term for an existing gasoline station, which has been in continuous operation since 1955.

216-06-BZ

35-17 Junction Boulevard, Located on the east side of Junction Boulevard between 35th and 37th Avenues., Block 1737, Lot 49, Borough of **Queens, Community Board: 4**. (SPECIAL PERMIT) 11-411, 11-412 - To allow the operation of an automotive service station.

217-06-A

40-54 Francise Lewis Boulevard, North side of the intersection of Francise Lewis Boulevard and 42nd Avenue., Block 5361, Lot 10, Borough of **Queens, Community Board: 11**. General City Law Section 35 - To permit the proposed construction in the bed of Francise Lewis Boulevard, a legally mapped street.

218-06-BZ

885 Second Avenue, Westerly side of Second Avenue between East 47th Street and East 48th Street., Block 1321, Lot 22, Borough of **Manhattan, Community Board: 6**. (SPECIAL PERMIT) 73-36 - To allow the operation of a Physical Culture Establishment in a portion of the cellar level of a forty six story commercial building.

219-06-A

241-10 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1003, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 & Section 35 - To permit the proposed development.

220-06-A

241-16 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1005, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

212-06-BZ

242-02 61st Avenue, Douglaston Parkway and 61st Avenue., Block 8286, Lot 185, Borough of **Queens, Community Board: 11**. Under 72-21 - To convert an existing 41,913 sf supermarket (UG6) into an electronic store with no limitations on floor area (UG10).

221-06-A

241-22 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1007, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

222-06-A

241-28 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1009, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

223-06-A

241-15 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1004, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

224-06-A

241-21 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1006, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

DOCKET

225-06-A

241-25 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1008, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

226-06-BZ

1766 East 28th Street, Between Avenue R and Quentin Road, Block 6810, Lot 34, Borough of **Brooklyn, Community Board: 15**. (SPECIAL PERMIT) 73-622 - To enlarge a semi detached, single family residence.

227-06-BZ

2066 Richmond Avenue, North of Knapp Street, Block 2102, Lot 90, Borough of **Staten Island, Community Board: 2**. Under 72-21 - To permit the proposed office building (UG6) within the underlying R3-2 zoning district.

228-06-A

2066 Richmond Avenue, North of Knapp Street, Block 2102, Lot 90, Borough of **Staten Island, Community Board: 2**. General City Law Section 35 - To permit a portion of the proposed development.

229-06-A

607 Bayside Drive, Adjacent to service road, Block 16350, Lot 300, Borough of **Queens, Community Board: 14**. Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which fails to comply with various bulk provisions of the Zoning Resolutions and provisions of the Building Code . Premises is located in an R-4 Zoning District .

230-06-A

107 Beach 220th Street, East side of Beach 220th Street 119.29' south of Breezy Point Boulevard., Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3 - Proposed alteration and enlargement of existing single family dwelling.

231-06-BZY

102 Greaves Avenue, Intersection of Greaves Avenue and Dewey Avenue., Block 4568, Lot 40, Borough of **Staten Island, Community Board: 3**. Extension of Time - 11-332 - For construction and obtain a Certificate of Occupancy for minor development.

232-06-A

28 Sand Court, South side of Sand Court, 157 feet west of Fathoe Capodanno Boulevard., Block 3122, Lot 213, Borough of **Staten Island, Community Board: 2**. General City Law Section 36, Article 3 - Proposed two-family dwelling.

233-06-BZ

2342 Haviland Avenue, Bounded by Zerega Avenue and Havemeyer Avenue., Block 3827, Lot 51, Borough of **Bronx, Community Board: 9**. Revocation of Permits - After work was performed, plans submitted to NYC Department of Buildings was self-certified.

234-06-BZ

1085 East 22nd Street, Suite 2100, East side of East 22nd Street between Avenue J and Avenue K., Block 7604, Lot 38, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622 - To allow the enlargement of a single family residence.

235-06-BZ

3155 Bedford Avenue, East side of Bedford Avenue between Avenue J and Avenue K., Block 7607, Lot 33, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622 - To allow the enlargement of a single family residence.

236-06-BZ

1500 East 21st Street, 115' north of intersection formed by East 21st Street and Avenue N., Block 7656, Lot 4, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622 - Proposed extension to dwelling.

237-06-BZ

1462 East 26th Street, West side 333'7" north of the intersection formed by East 26th Street and Avenue O., Block 7679, Lot 79, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622 - Proposed extension for one family dwelling.

238-06-A

110-124 East 12th Street, South side of 12th Street between third Avenue and Fourth Avenue., Block 556, Lot 48 & 49, Borough of **Manhattan, Community Board: 3**. Appeal - Department of Building refusing to revoke permits.

DOCKET

239-06-A

8 Suffolk Walk, West side 110.3' south of Oceanside Avenue., Block 16350, Lot p/o 400, Borough of **Queens**, **Community Board: 14**. General City Law Section 36, Article 3 - Propose to enlarge the existing first floor and construct a second story on a home.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

OCTOBER 24, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 24, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

181-38-BZ

APPLICANT – Michael Cosentino, for Michael Innella, owner.

SUBJECT – Application June 28, 2006 – Pursuant to ZR 11-411 for an extension of term to a gasoline service station (Sunoco) for a ten year term which expired on June 3, 2005, and Amendment to covert the existing service repair bays to a convenience store and a waiver to file the application more than 30 days after the expiration of term. The premise is located in an R-3A(CD) zoning district.

PREMISES AFFECTED – 410-412 City Island Avenue, corner of Ditmars Street, Block 5645, Lot 6, Borough of The Bronx.

COMMUNITY BOARD #10BX

558-71-BZ

APPLICANT – NYC Board of Standards and Appeals.

OWNER OF PREMISES: Dr. Anthony C. Banas

SUBJECT – Application January 27, 2006 – to consider dismissal for lack of prosecution.

PREMISES AFFECTED – 1949 Richmond Avenue, north of Rockland Avenue, Block 2030, Lot 1, Richmond Borough of Staten Island.

COMMUNITY BOARD #2SI

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application August 1, 2006 – Extension of Term Filed pursuant to section 11-411 of the zoning resolution for an automotive service station (Use Group 16) with accessory uses located within a C2-3/R7X zoning district. The term expired on July 7, 2006.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

31-06-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER OF PREMISES: Frank Falanga.

SUBJECT – Application February 24, 2006 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 102-10 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

APPEALS CALENDAR

337-05-A

APPLICANT – Adam W. Rothkrug, Esq., for Adragna Realty, LLC, owner.

SUBJECT – Application November 23, 2005 – An Appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R4 zoning district.

Premises is located in a R4-A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, between Morris Park Avenue and Van Nest Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD #11BX

102-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marie & Louis Livan, lessees.

SUBJECT –Application May 23, 2006 - Proposed reconstruction and enlargement of an existing single family dwelling located in the bed of a mapped street (Oceanside Avenue) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located in the bed of mapped street contrary to Section 35 , Article 3 of General City Law.

PREMISES AFFECTED – 1 Arcadia Walk, intersection of Oceanside Avenue and Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

125-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative Inc., owner;

SUBJECT – Application June 14, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling located partially in the bed of mapped street (Breezy Point Blvd.) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located in the bed of mapped street and service road is contrary to Department of Buildings Policy. Premises is located within an R4 Zoning District.

PREMISES AFFECTED – 43 Kildare Walk, northeast corner of Kildare Walk and Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

230-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Donald & Arlyn Kelly, owners.
SUBJECT – Application September 8, 2006 – Reconstruction and enlargement of an existing one family dwelling not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law. Premise is located within the R-4 zoning district.

PREMISES AFFECTED – 107 Beach 220th Street, east side Beach 220th Street, 119.23' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

270-06-A

APPLICANT – Commissioner of New York City Department of Buildings.

OWNER: Elba & Jeanette Bozzo

LESSEE: Relais and Chateaux

SUBJECT – Application October 5, 2006 to revoke Certificate of Occupancy #26180, on the grounds that the non conforming Use Group 5 of the premises has been discontinued for a period of two or more years and therefore has lapsed pursuant to ZR Section 52-61

PREMISES AFFECTED – 148 East 63rd Street, 120' from south east corner of Lexington Avenue and East 63rd Street, Block 1397, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #8M

OCTOBER 24, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 24, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

36-06-BZ

APPLICANT – Sheldon Lobel, P.C., for The RNR Group Ltd., owner.

SUBJECT – Application March 1, 2006 – Special Permit: Z.R. §73-53 to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,485 square feet.

PREMISES AFFECTED – 2125 Utica Avenue, east side of Utica Avenue between Avenue M and Avenue N, Block 7875, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

41-06-BZ & 42-06-BZ

APPLICANT – Steven Sinacori, Stadtmauer Bailkin, LLP, for New York Hospital Queens, owner.

SUBJECT – Application March 9, 2006 – Variance pursuant to Z.R. §72-21 to allow a predominantly below-grade group parking facility, accessory to New York Hospital Queens, to violate applicable front and side yard requirements. Site is located within R4 and R4/C1-2 districts (proposed as part of a Large Scale Community Facility Plan); contrary to Z.R. §§24-33, 24-34 & 24-35.

42-06-BZ: Variance pursuant to Z.R. §72-21 to allow a new five-story hospital building, to be constructed on the existing campus of New York Hospital – Queens, to violate applicable height, setback and rear yard equivalent requirements. Project site is located within an R4 district (proposed as R6 within Large Scale Community Facility Plan); contrary to Z.R. §24-522 and §24-382.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West side of 141st Street, Block 6410, Lots 1,19,21,24,25,26,28, Borough of Queens.

COMMUNITY BOARD # 7Q

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. 42-10.

CALENDAR

PREMISES AFFECTED – 363-371 Lafayette Street,
between Great Jones and Bond Streets, Block 530, Lot 17,
Borough of Manhattan.

COMMUNITY BOARD #2M

121-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's
Petroleum, Inc., owner.

SUBJECT – Application June 12, 2006 – Application filed
pursuant to sections 11-411 & 11-12 of the zoning
resolution to request the re-establishment of the previously
granted variance permitting the operation of an automotive
service station in a R7-1 zoning district and to legalize
certain minor amendments made to the previously approved
plans.

PREMISES AFFECTED – 495 East 180th Street, northwest
corner of the intersection formed between 180th Street and
Bathgate Avenue, Block 3047, Lot 21, Borough of The
Bronx.

COMMUNITY BOARD #6BX

158-06-BZ

APPLICANT– Lewis E. Garfinkel, R.A., for Debbie
Tokayer, owner.

SUBJECT – Application July 18, 2006 – Pursuant to ZR
73-622 for the enlargement of a single family residence
which is contrary to ZR 23-141 for open space and floor
area, ZR 23-461 for less than the minimum side yards and
ZR 23-47 for less than the required rear yard. The premise is
located in an R-2 zoning district.

PREMISES AFFECTED – 1410 East 22nd Street, West side
of East 22nd Street, 380' south of Avenue M, Block 7657,
Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, SEPTEMBER 12, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, June 20, 2006 as printed in the bulletin of June 29, 2006, Vol. 91, No. 26. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

308-64-BZ

APPLICANT – Sheldon Lobel, P.C., for 30 East 65th Street Corporation, owner.

SUBJECT – Application June 2, 2006 – Application is a reopening for an Extension of Term/Waiver of a variance for the use of 15 surplus attended transient parking spaces within a multiple dwelling presently located in a C5-1/R8/MP zoning district. The original grant of the variance by the Board of Standards and Appeals was made pursuant to Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 747-751 Madison Avenue, a/k/a 30-38 East 65th Street, Northeast corner of East 65th Street, Block 1379, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term of the prior grant, which expired on June 2, 1979; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, on June 2, 1964, the Board granted a waiver under the subject calendar number to allow 15 transient parking spaces in the cellar accessory garage of a multiple dwelling located at the subject premises, for a term of 15 years which expired on June 2, 1979; and

WHEREAS, the applicant represents that the grant was

not renewed due to administrative oversight; and

WHEREAS, the site is also the subject of Board action under BSA Cal. No. 309-64-A, which permitted daily transient parking, pursuant to Section 60 of the Multiple Dwelling Law; no term was associated with this grant; and

WHEREAS, the Board observed, on its site visit and through review of submitted photographs, that the required sign indicating building residents' right to recapture parking spaces was not permanently affixed to the wall in a conspicuous space, as required; and

WHEREAS, at hearing, the Board asked the applicant to properly secure the sign to the wall in a frame in a visible location; and

WHEREAS, the applicant agreed to frame the sign properly and affix it to the wall in a permanent fashion; and

WHEREAS, the applicant provided photographic evidence that the sign had been installed and permanently affixed to the wall to the Board's satisfaction; and

WHEREAS, accordingly, the Board finds that the instant application is appropriate to grant, based upon the evidence submitted.

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, and *reopens* and *amends* the resolution having been adopted on June 2, 1964, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from September 12, 2006, the date of this grant, to expire on September 12, 2016; *on condition* that that all work shall substantially conform to drawings filed with this application and marked "Received August 25, 2006"–(2) sheets; and *on further condition*:

THAT this term shall expire on September 12, 2016;

THAT there shall be a maximum of 15 parking spaces used for transient parking at the cellar level at the subject premises;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained within one year of the date of this grant;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

MINUTES

(DOB Application No. 104368391)

Adopted by the Board of Standards and Appeals,
September 12, 2006.

1077-66-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Richmond Petroleum, Incorporated, owner.

SUBJECT – Application May 10, 2006 – Pursuant to ZR §72-01 & §72-22 to reopen and amend the BSA resolution for a change of use to an existing gasoline service station with minor auto repairs. The amendment is to convert the existing auto repair bays to a convenience store as accessory use to an existing gasoline service station. The premise is located in C2-2 in an R3-2 zoning district.

PREMISES AFFECTED – 1320 Richard Terrace, Southwest corner of Bement Avenue, Block 157, Lot 9, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Carl Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an amendment to the previously granted variance for a gasoline service station with accessory uses; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, Community Board 1, Staten Island, recommends conditional approval of this application; certain of the conditions are addressed below, including that a landscaped buffer zone be maintained along the residential property line; and

WHEREAS, the premises is located on the southwest corner of Bement Avenue and Richmond Terrace; and

WHEREAS, the site is located within a C2-2 (R3-2) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 14, 1967 when, under the subject calendar number, the Board granted an application for the reconstruction of a prior gasoline service station; and

WHEREAS, subsequently, the grant was amended twice to permit an extension of time to complete construction; and

WHEREAS, on November 14, 2000, the Board granted an amendment to permit the installation of a metal canopy and the enlargement of the accessory building to create an attendant area, convenience store, and repair service area; and

WHEREAS, the applicant represents that the accessory building was never enlarged and the convenience store never established; and

WHEREAS, the applicant now seeks to make the following changes: an enlargement of the proposed accessory building by an additional 586.75 sq. ft., the provision of eight accessory parking spaces, the addition of two non-illuminated signs, and the addition of landscaping along the western edge of the property; and

WHEREAS, the applicant represents that the existing floor area of the accessory building is 1,344 sq. ft and after the proposed enlargement, the total floor area will be 1,930.75 sq. ft.; and

WHEREAS, at hearing, the Board asked the applicant to clarify the hours of operation for the service station and proposed convenience store; and

WHEREAS, the applicant responded that the station has been open for 24 hours a day and represents that there have not been any complaints; and

WHEREAS, additionally, the Board requested that the applicant maintain the site, specifically including the sidewalk, in good repair; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the proposed amendments are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on March 14, 1967, so that as amended this portion of the resolution shall read: “to permit the enlargement of the accessory service building and to permit its conversion to an accessory convenience store; the provision of eight accessory parking spaces; the addition of two non-illuminated signs, and the addition of landscaping, *on condition* that the use shall substantially conform to drawings as filed with this application, marked “Received May 10, 2006”-(3) sheets and “Received August 29, 2006”-(2) sheets; and *on further condition:*

THAT the sidewalk shall be repaired and maintained in good repair;

THAT planting along the westerly and southwesterly lot lines shall be planted and maintained;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review and approve the layout of the onsite parking;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 500828303)

Adopted by the Board of Standards and Appeals,
September 12, 2006.

405-71-BZ

MINUTES

APPLICANT – Sheldon Lobel, P.C., for Sarlanis Enterprises, LLC, owner; Amerada Hess Corporation, lessee.

SUBJECT – Application April 21, 2006 – Pursuant to ZR §73-11 for the proposed redevelopment of an existing automotive service station (Shell Station) with accessory uses (UG16) to a Gasoline Service Station (Hess) with an accessory convenience store (UG16).

PREMISES AFFECTED – 3355 East Tremont Avenue, eastern side of East Tremont Avenue at the intersection with Baisley Avenue, Block 5311, Lot 7, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to make modifications to an existing gasoline service station, including the construction of an accessory convenience store; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in the *City Record*, with continued hearings on August 22, 2006, and then to decision on September 12, 2006; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the premises is located on the east side of East Tremont Avenue at the intersection of Baisley Avenue, and is within C2-2/R4-A and R4A zoning districts; and

WHEREAS, the site has approximately 22,650 sq. ft. of lot area; and

WHEREAS, on December 14, 1971, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. §§ 73-211, 73-212 and 73-52, to permit the construction of an automotive service station with accessory uses extending into the R4A district; and

WHEREAS, subsequently, the grant was amended, at various times, most recently on March 17, 1987, to permit several site modifications; and

WHEREAS, the site is now occupied with a gasoline service station which includes a 2,167 sq. ft. building at the rear of the lot with an accessory sales area, an attendant's office, and storage; the building also has three automotive service bays which are used for minor automotive repairs and as a lubricatorium; and

WHEREAS, approximately one-third of the existing building extends into the R4A district; and

WHEREAS, the applicant now seeks to amend the previously approved plans to permit the replacement of the automotive service building with an accessory convenience store, the reconfiguration of the site, and to add a pump for diesel fuel; and

WHEREAS, specifically, the applicant proposes to replace the existing building with a 2,478 sq. ft. accessory convenience store, with approximately one-half of the new building located in the R4A zoning district; and

WHEREAS, the applicant proposes to install a six-foot tall opaque fence along the rear lot line abutting the adjacent residential properties; and

WHEREAS, additionally, the applicant proposes to plant trees along the fence to provide a buffer between the service station and the residences; and

WHEREAS, at hearing, the Board asked the applicant if the convenience store or the proposed diesel fuel pump would increase the traffic at the site; and

WHEREAS, the applicant responded that gas stations and accessory convenience stores are not end destinations, and serve vehicles already in the existing traffic flow; thus, there will not be an increase in traffic on the surrounding roadways; and

WHEREAS, further, the applicant submitted an analysis from a traffic consultant which stated that traffic would not be increased as a result of the accessory convenience store and the diesel fuel pump; and

WHEREAS, the Board finds that the traffic analysis satisfactorily addresses its concerns about potential traffic impacts; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the finding that the proposed amendments are appropriate, with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated December 14, 1971, so that as amended this portion of the resolution shall read: "to grant an amendment to permit the proposed site modifications and construction of an accessory convenience store *on condition* that the use and operation of the gasoline service station shall substantially conform to BSA-approved plans marked "Received August 8, 2006"--(6) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the fence around the perimeter of the site shall be 100 percent opaque;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 201042139)

Adopted by the Board of Standards and Appeals, September 12, 2006.

203-92-BZ

MINUTES

APPLICANT – Sullivan, Chester & Gardner, P.C., for Austin-Forest Assoc., owner; Lucille Roberts Org., d/b/a Lucille Roberts Figure Salon, lessee.

SUBJECT – Application January 26, 2005 – Extension of Term/Amendment/Waiver for a physical culture establishment. The premise is located in an R8-2 zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side, 333’ west of 71st Avenue, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment for minor modifications to the interior, and an extension of the term for a previously granted special permit for a physical culture establishment (PCE), which expired on March 1, 2004; and

WHEREAS, a public hearing was held on this application on August 9, 2005, after due notice by publication in *The City Record*, with continued hearings on September 25, 2005, November 15, 2005, January 24, 2006, May 9, 2006, July 25, 2006 and August 15, 2006, and then to decision on September 12, 2006; and

WHEREAS, Community Board 6, Queens, recommends approval of this application on the condition that all outstanding DOB violations be resolved; and

WHEREAS, the Queens Borough President recommends approval of this application on the condition that handicapped-accessible ramps and bathrooms be provided; and

WHEREAS, the subject premises is located on the south side of Austin Street, 333 ft. west of 71st Avenue; and

WHEREAS, the site is occupied by a two-story with cellar building, located within a C8-2 zoning district; and

WHEREAS, on March 1, 1994, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the re-establishment of a PCE in the subject building for a term of ten years; and

WHEREAS, the prior special permit, under BSA Cal. No. 869-82-BZ, was not renewed and lapsed; and

WHEREAS, the PCE occupies the cellar and first floor and commercial office uses occupy the second floor; and

WHEREAS, the PCE is operated as a Lucille Roberts fitness center; and

WHEREAS, the instant application seeks to make minor modifications to the interior; and

WHEREAS, the applicant notes that the BSA-approved

plans indicate that the second floor would be used by the PCE; and

WHEREAS, the applicant states that the PCE only occupies the first floor and cellar; and

WHEREAS, additionally, the applicant seeks a new ten-year term; and

WHEREAS, the Board expressed concern that the PCE had several open violations and was not operating in compliance with Local Law 58/87 or with a public assembly permit; and

WHEREAS, additionally, the Board was concerned that the operator of the PCE had not obtained a certificate of occupancy since 1992; and

WHEREAS, initially, the applicant was unable to resolve the violations and non-compliance; and

WHEREAS, in response to the Board’s concerns, the applicant stated that a waiver of 58/87 was being sought from the Mayor’s office; and

WHEREAS, ultimately, the applicant failed to obtain a waiver of Local Law 58/87 from the Mayor’s office; and

WHEREAS, at the Board’s request, the applicant revised the plans to show compliance with Local Law 58/87, specifically, to include an access ramp and handicapped-accessible bathrooms; and

WHEREAS, accordingly, the Board finds that a ten-year extension and the proposed amendments are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated March 1, 1994, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the last grant and to permit the proposed modifications to the interior of the PCE; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked “Received September 1, 2006”–(3) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from March 1, 2004, expiring March 1, 2014;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT all required permits, including a public assembly permit, shall be obtained within three months from the date of this grant;

THAT a new certificate of occupancy shall be obtained within six months from the date of this grant;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

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laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 12, 2006.

129-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Town Sports International, Inc., owner.

SUBJECT – Application September 21, 2004 – Pursuant to ZR §73-11 to re-open and amend the BSA resolution for the Extension of Term of a Physical Culture Establishment (New York Sports Club) and an Amendment to legalize modifications to the interior layout located in a five-story and cellar commercial building. This companion to BSA Cal. 130-93-BZ.

PREMISES AFFECTED – 151-155 East 86th Street, north side of East 86th Street, 62’ east of Lexington Avenue, Block 1515, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an amendment to legalize modifications to the interior layout, and an extension of the term for a previously granted special permit for a physical culture establishment (PCE), which expired on November 15, 2004; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, with continued hearings on August 22, 2006, and then to decision on September 12, 2006; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the north side of East 86th Street, 62 ft. east of Lexington Avenue; and

WHEREAS, the site is occupied by a five-story with cellar commercial building, located within a C2-8A/C5-1A zoning district; and

WHEREAS, on November 15, 1994, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the legalization of an existing PCE and to permit the expansion of the PCE onto the fifth floor and fifth-floor mezzanine of the adjoining five-story and cellar commercial building; and

WHEREAS, the term of this grant expired on November 15, 2004; and

WHEREAS, as approved, the PCE occupies the cellar

through fourth floors, including mezzanines of the subject building; and

WHEREAS, the PCE also occupies portions of the adjoining building at 157-161 East 86th Street, which was approved under BSA Cal No. 130-93-BZ; and

WHEREAS, an application for an amendment to legalize additional floor area at 157-161 East 86th Street and for an extension of term was brought concurrently with this application; and

WHEREAS, the PCE is operated as a New York Sports Club; and

WHEREAS, the instant application seeks to legalize modifications to the layout on the cellar through fourth floors of the subject building; and

WHEREAS, these modifications include the conversion of an aerobics area office space, the addition of a childcare area, the removal of one squash court, and the reconfiguration of exercise equipment rooms; and

WHEREAS, additionally, the applicant seeks to extend the term of the special permit for ten years; and

WHEREAS, at hearing the Board asked the applicant to address the PCE’s open DOB violations; and

WHEREAS, in response, the applicant submitted a statement into the record indicating that none of the violations affect egress and safety and all will be resolved through the course of obtaining the new certificate of occupancy; and

WHEREAS, accordingly, the Board finds that the proposed legalization and ten-year extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated November 15, 1994, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the last grant and to permit the legalization of interior layout modifications; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked “Received April 27, 2006”–(8) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from November 15, 2004, expiring November 15, 2014;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

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laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 103915355)

Adopted by the Board of Standards and Appeals, September 12, 2006.

130-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 161 East 86th Street, LLC, owner; TSI East 86th Street, Inc., lessee.

SUBJECT – Application September 21, 2004 – Pursuant to ZR §73-11 to re-open and amend the BSA resolution for the Extension of Term of a Physical Culture Establishment (New York Sports Club) which occupies the fifth floor and mezzanine of a five-story commercial building. This Application is also seeking an Amendment to legalize the expansion in floor area of the P.C.E. into the third and fourth floors of the commercial building. This is companion to BSA Cal. 129-93-BZ.

PREMISES AFFECTED – 157-161 East 86th Street, north side of East 86th Street, 139’ of Lexington Avenue, Block 1515, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an amendment to legalize additional floor area, and an extension of the term for a previously granted special permit for a physical culture establishment (PCE), which expired on November 15, 2004; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, with continued hearings on August 22, 2006, and then to decision on September 12, 2006; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the north side of East 86th Street, 139 ft. east of Lexington Avenue; and

WHEREAS, the site is occupied by a five-story with cellar commercial building, located within a C2-8A zoning district; and

WHEREAS, on November 15, 1994, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the legalization of an expansion of an existing PCE in an adjoining building onto the fifth floor and fifth-floor mezzanine of the subject five-story and cellar commercial building; and

WHEREAS, the term of this grant expired on November 15, 2004; and

WHEREAS, as approved, the PCE occupies the fifth floor and fifth floor mezzanine; and

WHEREAS, the PCE also occupies the adjoining building at 151-155 East 86th Street, which was approved under BSA Cal. No. 129-93-BZ; and

WHEREAS, an application for an amendment to legalize interior layout modifications at 151-155 East 86th Street and for an extension of term was brought concurrently with this application; and

WHEREAS, the PCE is operated as a New York Sports Club; and

WHEREAS, the instant application seeks to legalize minor modifications to the layout and an increase to the floor area; and

WHEREAS, specifically, the PCE no longer occupies the fifth floor and fifth-floor mezzanine (3,423 sq. ft. total floor area), but now occupies the entire third and fourth floors (13,668 sq. ft. total); and

WHEREAS, the applicant represents that this increase in floor area has not caused a significant increase to the use and occupancy, but has allowed for the facility to expand and provide improved services; and

WHEREAS, additionally, the applicant seeks to extend the term of the special permit for ten years; and

WHEREAS, at hearing the Board asked the applicant to address the PCE’s open DOB violations; and

WHEREAS, in response, the applicant submitted a statement into the record indicating that none of the violations affect egress and safety and all will be resolved through the course of obtaining the new certificate of occupancy; and

WHEREAS, accordingly, the Board finds that the proposed legalization and ten-year extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated November 15, 1994, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the last grant and to permit the legalization of layout modifications and an increase in floor area; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked “Received July 31, 2006”–(3) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from November 15, 2004, expiring November 15, 2014;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

THAT all conditions from prior resolutions not

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specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 103360220)

Adopted by the Board of Standards and Appeals, September 12, 2006.

68-94-BZ, Vol. II

APPLICANT – Cozen O’Connor, for Bay Plaza Community Center LLC, owner; Jack Lalanne Fitness Centers, Incorporated, lessee.

SUBJECT – Application June 30, 2006 – This application is to Reopen and Extend the Time to Obtain a Certificate of Occupancy for the operation of a PCE (Bally Total Fitness) on the first and second floors of the Co-Op City Bay Plaza shopping center which expires on August 23, 2006. The requested amount of time is 18 months. The premise is located in an C4-3 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, Southside at eastern-most side of Baychester Avenue, Block 5141, Lot 810, Borough of the Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment for an extension of time to obtain a certificate of occupancy for a physical culture establishment (PCE); and

WHEREAS, a public hearing was held on this application on August 15, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, on November 1, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C3-4 district, the operation of a PCE for a term of ten years; and

WHEREAS, the PCE is located on a portion of the first and second floors of the Co-Op City Bay Plaza shopping center and occupies 20,290 sq. ft. of floor area; and

WHEREAS, the PCE is operated as a Bally’s Total Fitness; and

WHEREAS, on April 12, 2005, the grant was extended for a term of ten years to expire on November 1, 2014; and

WHEREAS, a condition of the prior grant was that a

certificate of occupancy be obtained within 18 months; and

WHEREAS, the applicant represents that, per the lease agreement, the owner of the shopping center is required to obtain a new certificate of occupancy; and

WHEREAS, however, the applicant represents that DOB will permit the PCE to obtain a separate address for the facility so that it may obtain a certificate of occupancy independently of the one for the shopping center; and

WHEREAS, the applicant states that an additional 18 months are required to obtain a new certificate of occupancy for the PCE; and

WHEREAS, accordingly, the Board finds that it is appropriate to grant an extension of time to obtain a certificate of occupancy; and

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, said resolution having been adopted on November 1, 1994, so that as amended this portion of the resolution shall read: “to permit an 18-month extension of time to obtain a certificate of occupancy, *on condition*:

THAT a new certificate of occupancy shall be obtained by March 12, 2008, 18 months from the date of this grant;

THAT the conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

(DOB Application No. 200925721)

Adopted by the Board of Standards and Appeals, September 12, 2006.

114-94-BZ, Vol. II

APPLICANT – Ralph Giordano, AIA for Freehold SL Limited Partnership, owner; Kentucky Fried Chicken Corporation, lessee.

SUBJECT – Application March 24, 2006 – Extension of Term/Waiver – to allow the continuation of a drive-thru-facility that is accessory to an existing eating and drinking establishment located in a C1-2 zoning district which expired on July 2, 2005. The application seeks to renew the term for an additional 5 years.

PREMISES AFFECTED – 44 Victory Boulevard, Bay Street and Van Duzer Street, Block 498, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....

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0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of the term of the special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on July 2, 2005; and

WHEREAS, a public hearing was held on this application on August 15, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on the condition that a landscape buffer, and the entire site, be maintained as described below; and

WHEREAS, the site is located on the west side of Victory Boulevard at the corner formed by Victory Boulevard, Bay Street, and Van Duzer Street, within a C1-2 zoning district; and

WHEREAS, the site is occupied by an existing eating and drinking establishment (a Taco Bell and Kentucky Fried Chicken fast food restaurant), with a drive-through facility with a ten vehicle capacity reservoir, and 45 accessory parking spaces; and

WHEREAS, on May 2, 1995, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, authorizing the drive-through facility for the existing restaurant for a period of five years; and

WHEREAS, on April 16, 2002, the Board granted a five-year extension of term to expire on July 2, 2005; and

WHEREAS, the applicant requests an additional five-year extension of term; and

WHEREAS, the applicant represents that there have not been any complaints concerning the menu's sound board and that it is not audible beyond the boundaries of the site; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term is appropriate, so long as the restaurant complies with all relevant conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, said resolution having been adopted on May 2, 1995, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from July 2, 2005, *on condition* that that all work shall substantially conform to drawings filed with this application and marked "Received March 24, 2006"--(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 2, 2010;

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

THAT landscaping shall be maintained, including all trees on the approved plans;

THAT the premises shall be maintained free of debris and graffiti;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of

occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB App. No. 500972065)

Adopted by the Board of Standards and Appeals, September 12, 2006.

212-03-A

APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.

SUBJECT – Application April 4, 2006 – Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a single family dwelling located partially within the bed of a mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans. PREMISES AFFECTED – 129-32 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block 12891, Lot 2, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 24, 2006, acting on Department of Buildings Application Nos. 401623169 and 401623711 which read, in pertinent part:

"Pursuant to AC § 27-197, the Department may revoke a permit for failure to comply with the provisions of the AC, other applicable law or regulation, or a false statement or misrepresentation of material fact in the application accompanying plans and papers upon the basis of which the permit was issued, or whenever any permits were issued, or whenever any permit has been issued in error. Failed audit as per OPPN 1-04."; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in the *City Record*, and then to closure and decision on September 12, 2006; and

WHEREAS, this application seeks to amend the Board's previous granted resolution, dated October 23, 2003, which

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allowed two, single-family homes to be built in the bed of mapped street; and

WHEREAS, the amendments are necessary to reflect the current location of the homes contrary to the Board's previously approved plans; and

WHEREAS, by letter dated July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 4, 2006, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, by letter dated July 9, 2006, the Department of Transportation states that it has reviewed the above project and has no objections to the proposed dwellings located approximately 55 feet from the existing easterly curb line of Hook Creek Boulevard; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 24, 2006, acting on Application Nos. 401623169 and 401623711 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 29, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

213-03-A

APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.

SUBJECT – Application April 4, 2006 – Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a single family dwelling located within the bed of mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans.

PREMISES AFFECTED – 129-36 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block 12891, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 24, 2006, acting on Department of Buildings Application Nos. 401623169 and 401623711 which read, in pertinent part:

“Pursuant to AC § 27-197, the Department may revoke a permit for failure to comply with the provisions of the AC, other applicable law or regulation, or a false statement or misrepresentation of material fact in the application accompanying plans and papers upon the basis of which the permit was issued, or whenever any permits were issued, or whenever any permit has been issued in error. Failed audit as per OPPN 1-04.”; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in the *City Record*, and then to closure and decision on September 12, 2006; and

WHEREAS, this application seeks to amend the Board's previous granted resolution, dated October 23, 2003, which allowed two, single-family homes to be built in the bed of mapped street; and

WHEREAS, the amendments are necessary to reflect the current location of the homes contrary to the Board's previously approved plans; and

WHEREAS, by letter dated July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 4, 2006, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, by letter dated July 9, 2006, the Department of Transportation states that it has reviewed the above project and has no objections to the proposed dwellings located approximately 55 feet from the existing easterly curb line of Hook Creek Boulevard; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 24, 2006, acting on Application Nos. 401623169 and 401623711 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 29, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that

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all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

341-43-BZ

APPLICANT – Martyn & Don Weston, for 3319 Holding Corp., owner.

SUBJECT – Application June 8, 2006 – Extension of Term/Amendment filed pursuant to ZR §§11-411 & 11-412, to permit the continuance of a storage warehouse (UG 16) in a C8-2 & R5 zoning district for an additional 10 years. The application also seeks an amendment for the removal of an internal partition and the change from a chain link enclosure to a masonry enclosure of the accessory parking area.

PREMISES AFFECTED – 3319 Atlantic Avenue, northeast corner Euclid Avenue, Block 4145, Lots 1, 13, 23, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Don Weston.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

595-44-BZ, Vol. II

APPLICANT – Law Office of Howard Goldman, for Cinzia 30 CPS, Inc.

SUBJECT – Application July 7, 2006 – Pursuant to ZR 11-413 to permit the change of use on the entire 15th floor (Penthouse) from UG12 Restaurant to a UG6 Office Space. Floors one thru fourteen are a UG6 non-resident doctors' offices. The premise is located in R-10H zoning district.

PREMISES AFFECTED – 30 Central Park South, south side of street, 320' east of Avenue of the Americas, Block 1274, Lot 1055, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Emily Simons and other.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

866-49-BZ, Vol. III

APPLICANT – Carl A. Sulfaro, Esq., for 2912 Realty, LLC, owner.

SUBJECT – Application June 12, 2006 – Pursuant to ZR 11-411 for an Extension of Term for ten years for a gasoline service station (Shell Station) which expired on October 7, 2006, a Waiver of the Rules of Practice and Procedure for filing subsequent to the expiration of term and an Amendment to legalize the change in signage, new storefront and replacement of the wrought iron fencing with white vinyl fencing. The premise is located in an R3-X zoning district.

PREMISES AFFECTED – 200-01/07 47th Avenue, northeast corner of 47th Avenue and Francis Lewis Boulevard, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for continued hearing.

558-51-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application April 19, 2006 - pursuant to ZR§11-411 to extend the term of a Automotive Service Station expiring December 21, 2006. The application does not seek any physical changes from the previous approval.

PREMISES AFFECTED – 68-22 Northern Boulevard, southwest corner of Northern Boulevard and 69th Street, Block 1186, Lot 19, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

182-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2465 Broadway Associates, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar, first and second floors of a commercial building. This is a companion case to 183-95-BZ. The special permit expired on October 1, 2005.

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PREMISES AFFECTED – 2465/73 Broadway, west Broadway, 50' south of intersection with 92nd Street, Block 1239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

183-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Haymes Broadway, LLC, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar of a commercial building. This is a companion case to 182-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2473/5 Broadway, southwest corner of Broadway, and West 92nd Street, Block 1239, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

23-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yossi Kraus, owner.

SUBJECT – Application July 19, 2006 – Pursuant to ZR 73-11 & 73-622 this application is for an amendment to a previously granted Special Permit for the enlargement of a single family home for the proposed increase in floor area from .62 to 1.002 (+1,141.6 sq.ft.). The proposed plans are contrary to ZR 23-141(a) -floor area, open space; 23-48 - minimum side yard and 23-47-minimum rear yard. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1150 East 23rd Street, west side, Block 7622, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

346-05-A

APPLICANT – Joseph A. Sherry, for Abdo Alkaifi, owner.
SUBJECT – Application December 6, 2005 – Application to permit an enlargement of a commercial structure located partially in the bed of a mapped street (Beach 52nd Street) contrary to Section 35 of the General City Law. Premises is located within the C8-1 Zoning district.

PREMISES AFFECTED – 51-17 Rockaway Beach Boulevard, S/S 0' East of Beach 52nd Street, Block 15857, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 17, 2005, acting on Department of Buildings Application No. 402191310, reads, in pertinent part:

“A1- The proposed enlargement is on a site partially located in the bed of mapped street therefore no permit or Certificate of Occupancy can be issued as per Art 3, Sect 35 of the General City Law”; and

WHEREAS, a public hearing was held on this application on August 22, 2006 after due notice by publication in the *City Record*, and then to decision on September 12, 2006; and

WHEREAS, the subject site fronts on Rockaway Beach Boulevard, and extends into a portion of Beach 52nd Street, which runs perpendicular to the Boulevard; and

WHEREAS, Beach 52nd Street dead ends at Rockaway Freeway where it is interrupted and then starts again on the other side of the freeway; and

WHEREAS, the proposed enlargement of the building at the site will increase the encroachment into Beach 52nd Street; and

WHEREAS, by letter dated April 27, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated March 22, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, the Department of Transportation (DOT), in a letter dated July 3, 2006, stated that it reviewed the application and concluded that the proposed development will prevent

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Beach 52nd Street from being built to AASHTO standard width for additional street capacity to accommodate future traffic generation for two way traffic, as well as for installation of curb parking and a pedestrian sidewalk on both sides of the street; and

WHEREAS, DOT also expressed concern about the lack of provisions for a temporary cul-de-sac to be built prior to the street opening to Edgemere Avenue (which is on the other side of the freeway), and that the proposal would preclude the ability to park on at least one side of the streets; and

WHEREAS, finally, DOT stated that there would be a future "alignment problem"; and

WHEREAS, DOT therefore recommended denial of the application; and

WHEREAS, the applicant, in response, notes the following: (1) that the street will never need to be widened to AASHTO standard width because it will never be connected to the Rockaway Freeway, and thus no traffic increase will ever be generated; (2) that Beach 52nd Street is a dead end street that did not require a cul-de-sac when it was created, that there are other dead ends streets in the area that are configured in the same manner, and that Fire Department has no concerns about the lack of a cul-de-sac; (3) that there are only a few properties fronting on Beach 52nd, and that there is ample parking currently on both sides of the street as well as Rockaway Beach Boulevard and Beach 53rd Street; and (4) that the letter from DOT plainly noted that the improvement of Beach 52nd Street, including a portion of the subject property, was not included in DOT's Capital Improvement Program; and

WHEREAS, the applicant also noted that the existing building is already within the mapped street; and

WHEREAS, finally, the applicant notes that no alignment problem with that portion of Beach 52nd Street across the freeway will occur, since that portion is the same width as the subject portion of Beach 52nd Street; and

WHEREAS, the Board finds that in reviewing the record as well as the photos submitted, the proposed enlargement in the bed of the mapped street is modest and will not create parking deficiencies on Beach 52nd Street; and

WHEREAS, the Board also notes that the Fire Department has not expressed any concerns about access for its equipment in light of the proposal; and

WHEREAS, in sum, the Board agrees with the applicant that none of DOT's concerns have any merit; and

WHEREAS, accordingly, notwithstanding DOT's objections, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, November 17, 2005, acting on Department of Buildings Application No. 402191310, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received December 6, 2005"-(1) sheet; that the

proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

353-05-BZY

APPLICANT – Cozen & O'Connor for Emet Veshlom Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the required foundation of a proposed five-story multiple dwelling, filed on behalf of the developer; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on April 25 and June 6, 2006; on June 6, the matter was set for decision; and

WHEREAS, on July 18, 2006 the matter was reopened for a further hearing on August 15, 2006, on which date the matter was again set for decision on September 12, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 7, Brooklyn, opposed the application, stating that the foundation was not complete and that several stop work orders and violations were issued; and

WHEREAS, additionally, the South Park Slope Community Group and the Concerned Citizens of Greenwood

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Heights opposed the application, stating that the foundation work was not complete, that work was done after hours, that work was done in an unsafe manner, and that the permit under which performed was done was revoked, and only reissued one day before the rezoning; and

WHEREAS, certain elected officials, including State Senator Velmanette Montgomery, State Assemblyman James Brennan, Public Advocate Betsy Gotbaum, and City Council members Sara M. Gonzalez and Bill de Blasio, also provided testimony in opposition to the application; and

WHEREAS, the Board notes that some of the testimony provided by the above individuals and entities related directly to the application; and

WHEREAS, some of the opposition testimony, however, reflected a general objection to any development on the site that does not comply with the new zoning district parameters (discussed below), or that interferes with the vista in Greenwood Cemetery of the Minerva statue and its alignment with the Statue of Liberty; and

WHEREAS, the Board understands that many community residents were particularly concerned about the size of the proposed building, and with the potential interference with the vista; and

WHEREAS, while testimony that reflected this sentiment was accepted into the record, the Board's determination as reflected herein is guided by applicable legal principles, and was based on consideration of the legal claims made by the applicant as well as arguments made by the Department of Buildings (DOB); and

WHEREAS, the subject site is located on the northwest corner of 7th Avenue and 23rd Street; and

WHEREAS, the subject site has a total lot area of approximately 10,016 sq. ft.; and

WHEREAS, the site is proposed to be developed with a five-story, 38-unit multiple dwelling (hereinafter, the "Proposed Development"); and

WHEREAS, on August 3, 2005, pursuant to DOB's professional certification program, the developer pre-filed an application for a New Building permit, under Application No. 301984191-01-NB, for the Proposed Development; and

WHEREAS, New Building Permit No. 301791318-01-NB (hereinafter, the "NB Permit") was subsequently obtained by the developer on August 31, 2005, and work commenced shortly thereafter; and

WHEREAS, as discussed in greater detail below, DOB states that the NB Permit was obtained based upon a set of plans with a perforation date of August 30, 2005; and

WHEREAS, the applicant states that excavation commenced on September 19, 2005, and that concrete was first poured and concrete blocking was first installed on September 22, 2005; and

WHEREAS, on October 5, 2005, DOB initiated a special audit review of the NB Permit (the "Audit"), and certain zoning and Building Code objections were raised; and

WHEREAS, the specific audit objections concern ZR requirements related to floor area, lot coverage, height and

setback, and inner courts, and Building Code requirements related to sprinklers, construction classification, and exit passageways (hereinafter, the "Objections"); and

WHEREAS, on October 11, 2005, subsequent to the Audit, DOB issued a letter to the developer and the project architect providing notice of its intent to revoke the NB Permit based on the Objections (the "Notice of Intent"); a stop work order (the "October 11 SWO") was also issued on this date; and

WHEREAS, the applicant states that as of October 11, 2005, approximately 86 percent of the concrete blocking and cement work has been performed; and

WHEREAS, DOB notes that the NB Permit was formally revoked on November 3, 2005 (the "Revocation"), because the applicant did not provide a response to the Objections that precipitated the Notice of Intent; and

WHEREAS, the applicant represents that work resumed on November 10, 2005, the day on which a response to the Audit was finally submitted to DOB by the applicant; and

WHEREAS, the applicant states that this response was allegedly conditionally accepted by DOB on November 10, and the developer believed that work could resume; and

WHEREAS, however, DOB disputes that the October 11 SWO was lifted on November 10; and

WHEREAS, DOB notes instead that on November 15, 2005, under the same DOB application number, the NB Permit was reissued, as evidenced by a letter from the Deputy Borough Commissioner of DOB's Brooklyn office (the "November 15 Letter"); and

WHEREAS, DOB states that and the conditional audit acceptance was not formalized until November 15, 2005 and that the October 11 SWO was in effect until then; and

WHEREAS, the applicant states that no work was performed on November 15, 2005; and

WHEREAS, when construction commenced, the site was within an R6 zoning district; and

WHEREAS, the Proposed Development complied with the R6 zoning in terms of height and floor area; and

WHEREAS, however, as noted above, on November 16, 2005 (hereinafter, the "Rezoning Date"), the City Council voted to enact the Park Slope South rezoning proposal, which changed the site's zoning from R6 to R6B; and

WHEREAS, the Proposed Development would not comply with the new R6B district provisions concerning height and floor area; and

WHEREAS, specifically, the Proposed Development has a height of 68 feet (50 feet is the maximum permitted in the R6B zoning district) and an FAR of 3.0 (2.0 is the maximum permitted); and

WHEREAS, because the Proposed Development violates these provisions of the R6B zoning and work on the required foundation was not completed by the Rezoning Date, the reinstated permit lapsed by operation of law; and

WHEREAS, the developer of the Proposed Development now applies to the Board to renew the NB Permit pursuant to ZR § 11-331, so that the Proposed Development may be fully constructed under the prior R6 zoning; and

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WHEREAS, ZR § 11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, ZR § 11-31(a) reads: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the Board notes that the central issue in this case is whether the NB Permit satisfies the requirements of ZR § 11-31(a); and

WHEREAS, in a submission dated March 28, 2006, DOB stated that its position was that the reissued permit lapsed by operation of law on the Rezoning Date; and

WHEREAS, in its second submission, dated April 11, 2006, DOB stated that because the October 11 SWO was not formally lifted until November 15, 2005, the Board should not consider work performed from November 10 until November 15; and

WHEREAS, in a submission dated May 9, 2006, DOB states that the NB Permit as obtained on August 31, 2005 was invalid and properly revoked, given that that the plans on which it was based presented the ZR and Building Code non-compliances referenced above; and

WHEREAS, DOB asked that the Board not consider any work performed under the NB Permit, but only consider that work performed after the reissued permit was obtained on November 15, 2005; and

WHEREAS, DOB states that a reissued permit “should be

considered a new permit for vesting purposes lest an applicant benefit from work retroactively legitimized in error”; and

WHEREAS, DOB also indicates in its May 9 submission that it was auditing the plans on which the reissued permit was based; and

WHEREAS, in its final submission, dated July 13, 2006, DOB reports that this second audit revealed that the plans upon which the reissued permit was obtained were acceptable, but maintains its position that the professionally certified NB Permit was not valid upon issuance on August 31, 2005 and properly revoked; and

WHEREAS, DOB also states that the work performed under the NB Permit, from around August 31 to October 10, 2005, should not be considered by the Board during its assessment of whether excavation was complete and substantial progress was made on foundations; and

WHEREAS, DOB notes in its July 13 submission that pursuant to ZR § 11-31(a), a lawfully issued permit must be based on an approved application showing “complete plans and specifications”; and

WHEREAS, DOB states that it would undermine its professional certification program to allow work performed under an invalid professionally certified permit to be considered in applications under ZR § 11-331, and that it would invite developers to make poor filings in order to commence work as soon as possible and finish foundation construction prior to a rezoning; and

WHEREAS, leaving aside these policy concerns, the Board concurs with DOB’s position that work performed under the NB Permit from the time that it was obtained until the October 11 SWO should not be considered in this application; and

WHEREAS, the Board notes that ZR § 11-31(a) provides that questions about the validity of a new building permit that arise during a ZR § 11-331 application shall be resolved by the Commissioner of DOB; and

WHEREAS, here, DOB audited the professionally certified NB Permit and concluded that it was so defective that the Notice of Intent was issued, and later, after no response was received from the developer or the developer’s representatives, that it should be revoked in its entirety; and

WHEREAS, in sum, since the NB Permit was invalid when obtained through professional certification and was revoked subsequent to the Audit, and since the reissued permit was obtained on November 15, 2005, one day prior to the Rezoning Date, the Board can only consider construction done thereafter; and

WHEREAS, as noted above, the applicant states that no work was performed on November 15, 2005; and

WHEREAS, thus, the excavation and foundation work performed by the applicant was completed without a lawful building permit in place; and

WHEREAS, since ZR § 11-311 requires that such work be undertaken pursuant to a lawfully issued permit, the instant application must be denied; and

WHEREAS, the applicant makes numerous arguments as

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to why DOB's position should not be relied upon by the Board: (1) the Audit and Objections, and consequently, the Revocation, are defective because the DOB auditor reviewed an allegedly outdated set of plans; (2) the Revocation was improper in that it was contrary to what the applicant believes is DOB's normal practice; (3) DOB has previously stated that deficiencies in the plans underlying a building permit can be cured prior to a rezoning without any penalty to the developer in a ZR § 11-331 application; (4) the October 11, 2005 SWO was improperly issued, in direct contradiction to the Building Code and DOB policy; (5) that none of the Objections relate to excavation or foundation work; (6) DOB only changed its position based upon political criticism and press coverage; (7) DOB has a history of making errors and that the Board should not credit its version of events; and (8) the policy considerations concerning professional certification and the incentive to "beat the clock" are inappropriate bases for DOB's position as to the validity of the NB Permit; and

WHEREAS, as to the argument that the DOB auditor reviewed the wrong set of plans, the applicant initially stated that the actual DOB approved plans that should have been reviewed were dated September 1, 2005, and presumably would not have resulted in the Objections, the October 11 SWO or the Revocation; and

WHEREAS, late in the hearing process, the applicant submitted to the Board what appears to be the September 1 set of plans; these plans are perforated "Approved 09 01 2005 DOB BKLYN" and stamped "Approved Per OPPN #5/02 Professional Certification Brooklyn 3B"; and

WHEREAS, the Board conducted a hearing where both the applicant and DOB discussed the relevance of these September 1 plans; and

WHEREAS, at this hearing, DOB explained to the Board that it had no official record of the September 1 plans, and that they should not be considered the approved record set; and

WHEREAS, in a submission dated August 22, 2006, DOB elaborated on this explanation, stating that it reviewed the September 1 plans on a preliminary basis, and concluded that the zoning calculations reflected in this set of plans is sufficiently changed from the August 30 plans that the filing of what is known as a Post-Approval Amendment ("PAA") was required; and

WHEREAS, according to DOB, the processing of a PAA involves more than just the perforation and stamping of plans; in addition, a fee must be paid, the PAA form must be professionally certified, other forms must be amended and submitted, and the amended set of plans must be microfilmed and placed in the job folder; and

WHEREAS, DOB states, and the applicant does not dispute, that no PAA was filed in conjunction with the September 1 plans; and

WHEREAS, DOB states that aside from perforation of purported new plans, none of the other steps were taken; and

WHEREAS, DOB states that it has no microfilm record of the September 1 plans, nor were they in the job file; and

WHEREAS, in sum, DOB concludes that the September 1

plans were never accepted as the new record plans, superseding the August 30 plans, and that the Audit and Revocation were proper; and

WHEREAS, the applicant, in a submission dated September 5, 2006, states that the August 30 plans are not the official plans that should have been audited; and

WHEREAS, the applicant's contends that the August 30 plans were only filed at the pre-filing stage and were prepared before the redesign of the building (which is reflected in the September 1 plans); and

WHEREAS, the applicant theorizes that the September 1 plans were actually the plans that were submitted in conjunction with the obtainment of the NB Permit, and that the perforation took place one to two days later; and

WHEREAS, the applicant suggests that the date discrepancy reflects nothing more than a delay in the perforation due to the high volume of work in the Brooklyn office of DOB; and

WHEREAS, under this theory, the applicant suggests that no PAA was necessary, because the issuance of the NB Permit was based upon the September 1 plans; and

WHEREAS, the applicant attempts to support this theory by noting the following: (1) the August 30 plans were on 11 by 17 inch paper, and thus were too small to be the record set; (2) the actual record set is also never put in the job folder, but is kept as a rolled set in a different area of DOB's borough office; and (3) the perforation and the stamp were placed on the September 1 plans by a DOB employee, and they therefore constitute DOB-approved documents; and

WHEREAS, the applicant's alternative argument is that even if the September 1 plans were brought to DOB after the issuance of the Permit, the failure to comply with the PAA requirements is nothing more than a clerical error; and

WHEREAS, the applicant characterizes the PAA form as the equivalent of a "cover letter"; and

WHEREAS, in support of these arguments, the applicant submitted an affidavit from the project architect and from an expeditor who states that he has experience in DOB filing procedure; and

WHEREAS, the architect states that the building was redesigned and new plans were completed on or about August 23, 2005 and that the redesign was reflected in the September 1 plans; and

WHEREAS, the architect claims that his office contacted DOB when the Audit was initiated, and at a subsequent meeting, the DOB auditor was informed that the wrong plans were being reviewed; and

WHEREAS, the expeditor states that, based upon his knowledge of DOB generally, approved plans are not located in the job folder, but are "stored separately from the physical files"; and

WHEREAS, the expeditor also states that perforation is done by a clerk, and that plans may not be perforated until a few days later after they are submitted; and

WHEREAS, the Board has reviewed the submissions of both DOB and the applicant; and

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WHEREAS, at the outset, the Board notes that the argument that DOB audited the incorrect set of plans was made for the first time by the applicant during the course of the hearing process; and

WHEREAS, the Board observes that the applicant's argument is an appeal of the Revocation, DOB's determination that the deficiencies revealed in the Audit provided a sufficient basis for the Revocation of the NB Permit; and

WHEREAS, the Revocation was a final determination of DOB; and

WHEREAS, the Board notes that while it has jurisdiction over appeals from such final determinations, no such appeal was taken within thirty days of the date of the decision, as required by the City Charter and the Board's Rules of Practice and Procedure, even though the project architect conceded in his most recent affidavit that his office believed that DOB was reviewing the incorrect plans when the Audit was in process; and

WHEREAS, this argument is time-barred, because an appeal of the Revocation must have been filed with the Board within 30 days of its issuance by DOB, not close to nine months later in the context of an application made under ZR § 11-331; and

WHEREAS, however, even assuming *arguendo* that the applicant's argument should be entertained, the Board does not find it persuasive; and

WHEREAS, first, the applicant did not provide any explanation for its contention that record plans are kept in a location besides the job folder at the DOB offices; in fact, no description of this location was offered, aside from the vague assertion that record plans are "stored separately"; and

WHEREAS, in a submission dated July 6, 2006, the Concerned Citizens of Greenwood Heights submitted the 11 by 17 inch set of the August 30 plans – with an August 30, 2005 perforation – and stated that, based upon their review, the set was identical to the microfilmed set of plans on file at DOB; and

WHEREAS, the logical conclusion is that the 11 by 17 set of plans that the audit was based upon is a reduced copy of what was officially offered as the record set when the NB Permit was obtained; and

WHEREAS, therefore, even if the applicant is correct in its assertion that the large set of the record plans are stored somewhere besides in the job folder, this does not mean that the auditor reviewed an incorrect set of plans; and

WHEREAS, second, the Board disagrees that the alleged perforation of the September 1 plans by a DOB employee constitutes an official recognition by DOB of said plans as the record set; and

WHEREAS, DOB explained all of the additional steps that must be undertaken to make an official submission of revised plans, none of which occurred here; and

WHEREAS, DOB does not consider these requirements to be clerical in nature, and the Board agrees that permit applicants at DOB have a fundamental responsibility to ensure that submissions are made according to proper procedure; and

WHEREAS, third, the applicant was unable to provide

proof that the September 1 plans were microfilmed, or that a rolled set exists in the unspecified location at the DOB offices; and

WHEREAS, in fact, the Board notes that DOB's Building Information System (BIS) reflects that a microfilming fee was paid on August 31, 2006 (the day the NB Permit was issued); DOB stated at hearing that the microfilm does not reflect the September 1 plans and that the only microfilm available is of the August 30 plans; and

WHEREAS, additionally, as noted above, the Concerned Citizens of Greenwood Heights stated that it had reviewed the microfilmed plans at DOB, and that the microfilm reflects the August 30 plans; and

WHEREAS, the Board finds the contention that the August 30 plans were not the plans upon which the NB Permit was based to be illogical in light of the fact that they were microfilmed on the date the NB Permit was obtained and a fee for microfilming was paid; and

WHEREAS, the Board observes that there would be no reason to have the August 30 plans perforated and then microfilmed if the September 1 plans were to be the plans of record; and

WHEREAS, finally, the project architect, in his most recent affidavit, states that his office cannot verify that the September 1 plans were in fact filed with DOB on August 31, 2005; and

WHEREAS, the architect states "we cannot state to the Board precisely what happened at the DOB on the dates of August 31, 2005 and September 1, 2005."; and

WHEREAS, in sum, the Board does not find the applicant's contention that DOB audited the incorrect set of plans, even if properly before the Board, to be credible or supported by any evidence; and

WHEREAS, finally, it must be noted that the applicant failed to submit corroborating evidence in support of the contention that the project architect notified DOB during the Audit that the incorrect plans were being reviewed; and

WHEREAS, neither the applicant nor the architect submitted any documentation, such as a dated letter to DOB, that supports the contention that DOB was put on notice that its auditor was reviewing the incorrect plans; and

WHEREAS, it strains credulity that the developer would fail to aggressively appeal, either at DOB or at the Board, what is contended to be an improper permit revocation when the right to develop under the prior zoning was at stake; and

WHEREAS, moreover, the Board finds it ironic that in its initial papers related to the instant application, no mention of the allegedly faulty Audit was made; and

WHEREAS, in fact, the initial papers do not mention the Revocation at all; and

WHEREAS, instead, the applicant's revised Statement, dated February 10, 2006, merely states that the NB Permit application was initially approved on August 31, 2006 – no mention is made of plans dated September 1, 2005; and

WHEREAS, likewise, in its April 11, 2006 submission, the applicant again makes no mention of any deficiencies in the

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Audit or Revocation; and

WHEREAS, a prior affidavit from the project architect, attached to the April 11, 2006 submission, also does not allege that the Audit was in any way improper; and

WHEREAS, the applicant did not allege that the Audit was defective until it June 27, 2006 submission, after DOB expressed its position that work undertaken pursuant to the revoked NB Permit should not count towards a vesting determination; and

WHEREAS, based upon the above, the Board questions whether this argument is made in good faith; and

WHEREAS, as to the second argument noted above (that the Revocation was improper and contrary to DOB's normal practice), the applicant states that it occurred during the middle of a dialog between the developer's representatives and DOB as to how to resolve the Audit, and that a meeting to discuss them was scheduled for November 4, 2005; and

WHEREAS, the applicant states that based on its experience with DOB, it is unusual that a revocation was issued while discussions were apparently initiated; and

WHEREAS, the Board restates its position that any challenge to the Revocation is time-barred; and

WHEREAS, further, the Board finds the applicant's contention irrelevant: even if what transpired is unusual, the applicant does not dispute the factual assertion that there was not a sufficient response to the Notice of Intent; and

WHEREAS, additionally, the applicant has submitted no evidence of the alleged scheduling of the November 4 meeting, and DOB states that it has no record of it; and

WHEREAS, accordingly, the Board rejects the applicant's second argument; and

WHEREAS, as to the third argument (that DOB has previously stated that deficiencies in the plans underlying a building permit can be cured prior to a rezoning without any penalty to the developer in a ZR § 11-331 application), the applicant states that in a comparable application brought under BSA Cal. No. 354-05-BZY, DOB noted on the record that an applicant has the right to amend plans in order to correct ZR and Building Code deficiencies; and

WHEREAS, the applicant notes that in its April 11, 2006 submission on Cal. No. 354-05-BZY, DOB stated that work performed prior to such amendment could still count towards a determination that excavation was complete and substantial progress was made on foundations; and

WHEREAS, in this April 11 submission, DOB states that after an audit revealed potential issues with the building permit in question, a notice of intent to revoke the permit was issued; and

WHEREAS, DOB goes on to state that the developer worked with DOB to resolve the audit, and that it ultimately withdrew the notice of intent, finding that the developer's response sufficiently demonstrated that the permit should not be revoked; and

WHEREAS, DOB also asserted in this submission that the notice of intent was not a determination that the plans and specifications were not complete and that the building permit

was not legally issued; and

WHEREAS, DOB concluded that since the permit was never revoked, it was lawfully issued; and

WHEREAS, the Board has reviewed these statements and finds that the applicant's reliance upon them in support of its argument is misplaced: in the instant application, unlike in BSA Cal. No. 354-04-BZY, there was an affirmative DOB determination that the ZR and Building Code non-compliances were fatal to the validity of the permit such that revocation was required; and

WHEREAS, here, since there was a revocation of the NB Permit based upon non-compliance with zoning and Code, a determination that it was not a lawfully issued permit for purposes of a ZR § 11-331 application was appropriately reached; and

WHEREAS, however, in BSA Cal. No. 354-04-BZY, since the developer there worked with DOB to resolve the outstanding objections, there was no revocation, and no opportunity to reach a conclusion that the permit in question did not comply with ZR § 11-31(a); and

WHEREAS, in other words, once a permit is revoked, the available cure of resolving the outstanding objections in order to prevent revocation and a determination of invalidity is foreclosed; the only "cure" is the reinstatement of the permit, which, as stated by DOB, is akin to the issuance of a new permit; and

WHEREAS, accordingly, the Board rejects the applicant's third argument; and

WHEREAS, as to the fourth argument (that the October 11 SWO was issued in direct contradiction to the Building Code and DOB policy), the applicant states that had it not been issued, work could have continued to the point of full completion of foundations, such that the instant application would not have been necessary; and

WHEREAS, the applicant states that, pursuant to Building Code § 27-197, SWOs may only be issued when there is an imminent peril to life or property; and

WHEREAS, the applicant also argues that DOB's Operational Policy and Procedure Notice #2/04 (the "PPN") provides that a SWO can only be issued with a notice of intent to revoke a permit when the reason for possible revocation presents an imminent peril to life or property; and

WHEREAS, the applicant states none of the ZR and Building Code provisions cited in the Objections, if violated, would represent an imminent peril to life or property; and

WHEREAS, first, the Board notes that the instant application is not an appeal challenging the authority of DOB to issue the October 11 SWO; and

WHEREAS, like the Revocation, had the developer wished to pursue such an appeal, it should have been filed at the Board within 30 days of its issuance; and

WHEREAS, further, the Board notes that DOB's authority to issue a stop work order is derived from Building Code § 26-118, which provides, in sum and substance, that an order to stop work may be issued at any time when it is found that building work is being executed in violation of the provisions of any law

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rule or regulation enforceable by DOB; and

WHEREAS, this broad grant of authority does not depend upon a finding that work represents an imminent peril to life or property; and

WHEREAS, Building Code § 27-197 actually refers to immediate suspension of a permit, which is a distinct action from an order to stop work; and

WHEREAS, further, the Board finds that the PPN does not limit DOB's ability to proceed under Building Code § 26-118; rather, it merely references a form of letter that may be used if it is determined that the reasons for revocation present peril; and

WHEREAS, accordingly, the Board rejects the applicant's fourth argument; and

WHEREAS, as to the fifth argument (that none of the Objections relate to excavation or foundation construction), the Board notes that ZR § 11-31(a) specifically provides that a lawfully issued permit is one based on plans showing the entire proposed development, and not a portion thereof; and

WHEREAS, any non-compliance reflected in the plans, regardless of the section of the building depicted, is relevant as to ZR § 11-31(a); and

WHEREAS, accordingly, the Board rejects the applicant's fifth argument; and

WHEREAS, as to the sixth argument (that DOB only changed its position based upon political criticism and press coverage), the applicant notes that this change arose around the same time that there was allegedly negative press coverage and criticism of DOB from elected officials; and

WHEREAS, however, even if there was a proven correlation in time between the alleged negative press coverage/criticism and DOB's change in position, the Board observes that any conclusions about causation are, at best, unsubstantiated speculation; and

WHEREAS, the Board further observes that like any party to a public hearing process that extends over numerous hearings, with multiple submissions and many complicated issues, DOB is entitled to refine or modify its position; and

WHEREAS, accordingly, the Board rejects the applicant's sixth argument; and

WHEREAS, as to the seventh argument (that DOB has a history of making errors and that the Board should not credit its version of events), the applicant cites to an erroneous revocation of the reissued permit, which allegedly occurred on June 5, 2006; and

WHEREAS, the applicant states that this is an example of how easily miscommunication can occur at DOB, and suggests that the developer should not be penalized because the Revocation was issued one day prior to a scheduled November 4 meeting to discuss the Objections; and

WHEREAS, the applicant did not provide any evidence of this alleged erroneous revocation into the record; and

WHEREAS, however, even if it did occur, the Board would not find it significant; and

WHEREAS, as noted above, there is no evidence that a meeting was scheduled for November 4, 2005; and

WHEREAS, further, there is nothing in the record to suggest that that the Revocation was issued in error or reflected a lack of communication at DOB; and

WHEREAS, accordingly, the Board rejects the applicant's seventh argument; and

WHEREAS, as to the eighth argument (that the policy considerations concerning professional certification and the incentive to commence work as soon as possible are inappropriate bases for DOB's position as to the NB Permit), the applicant notes that professional certification results in a permit with the same legal status as a permit that is issued after DOB plan examination, and that there was no effort to beat the clock here, as evidenced by the fact that original plans were allegedly drafted in 2004 and demolition of the improvements that formerly occupied the site occurred in April of 2005; and

WHEREAS, however, as stated above, the Board does not concur with DOB's position because it is concerned about the integrity of the professional certification program or incentives to commence work improperly, though these are obviously legitimate considerations; and

WHEREAS, rather, the Board bases its concurrence on its reading of the plain language ZR § 11-31(a), which requires that a lawfully issued building permit be based on complete plans and specifications, and otherwise be approvable, as determined by the Commissioner of Buildings; and

WHEREAS, the NB Permit does not meet this test, as evidenced by the Objections and the failure to cure the objections prior to the Revocation; and

WHEREAS, accordingly, the Board rejects the applicant's eighth argument; and

WHEREAS, in sum, the Board finds: (1) that the NB Permit, when obtained by the developer through professional certification, was not based on complete plans and specifications, was not approvable, and was invalid; (2) that the Board can properly exclude from its consideration the work performed under the NB Permit from the time it was pulled until the issuance of the October 11 SWO; and (3) that none of the applicant's arguments to the contrary are persuasive; and

WHEREAS, thus, because all excavation and foundation work was performed under an invalid permit, which is impermissible as per ZR § 11-331, the Board concludes that the application must be denied.

Therefore it is Resolved that this application to renew DOB Permit No. 301984191-01-NB pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, September 12, 2006.

356-05-A & 357-05-A

APPLICANT – The Law Office of Fredrick A. Becker, for Structures LLC, owner.

SUBJECT – Application December 14, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning. New

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zoning district is R3X as of September 15, 2005.
PREMISES AFFECTED – 150 and 152 Beach 4th Street a/k/a
1-70 Beach 4th Street, south of Seagirt Avenue, Block 15607,
Lot 62 and 63, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and
Commissioner Collins.....3

Negative:.....0

0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete two proposed semi-detached two-family dwellings under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, with continued hearings on July 18, 2006 and August 22, 2006, and then to decision on September 12, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 14, Queens, recommends disapproval of this application; and

WHEREAS, the Neighbors of Mott Creek Civic Association and certain neighbors also provided testimony in opposition to the application, citing concerns about the level of completion of work and expenditures and the preservation of neighborhood character; and

WHEREAS, further, City Council Member Tony Avella provided testimony in opposition to the application, citing concerns that the foundations are not complete and about construction methods; and

WHEREAS, the applicant states that the subject premises consists of two adjacent 3,000 sq. ft. lots with frontage on Beach 4th Street, south of Seagirt Avenue; and

WHEREAS, the applicant proposes to develop the site with two semi-detached two and a half-story with cellar residential buildings, with one dwelling of 3,248.08 sq. ft. of floor area and the other with 1,920.2 sq. ft. of floor area (hereinafter, the “Buildings”); and

WHEREAS, the site was formerly located within an R5 zoning district; and

WHEREAS, the Buildings comply with the former R5 zoning district parameters; and

WHEREAS, however, on September 15, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Far Rockaway and Mott Creek Rezoning, which rezoned the site to R3X; and

WHEREAS, the Buildings do not comply with the R3X zoning district parameters as to use, dwelling unit count, lot size, FAR, building height, side yards, and perimeter wall height; and

WHEREAS, specifically, as to use, R3X zoning district

regulations permit two-family homes, but semi-attached homes, like those proposed, are not permitted; and

WHEREAS, further, the number of dwelling units permitted is determined by a designated dwelling unit factor; under this factor, only two dwelling units would be permitted, rather than the total of four proposed; and

WHEREAS, as to lot size, the two lots are each 30 ft. wide with 3,000 sq. ft. of lot area; R3X zoning regulations require a minimum lot width of 35 ft. and a minimum lot size of 3,325 sq. ft.; and

WHEREAS, as to FAR, the proposed FAR is 1.11; the maximum permitted in the new R3X zoning district is 0.5; and

WHEREAS, the zoning change also results in non-compliances with respect to the total height and perimeter wall height; and

WHEREAS, specifically, the Buildings provide a street wall of 30 ft. and a total height of 40 ft.; R3X zoning district regulations permit a perimeter wall height of 21 ft. and a total height of 35 ft.; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, the record indicates that the following permits were lawfully issued to the owner by DOB prior to the Enactment Date, on August 19, 2005: Permit Nos. 402189038-01 and 402189047-01 (hereinafter, the “New Building Permits”); and

WHEREAS, the opposition contested the validity of the New Building Permits, raising the concern that different address numbers appear at different times on the DOB documents (including the permits) associated with the development; and

WHEREAS, at hearing, the applicant explained that the discrepancy in the addresses is due to an error by the Queens Borough President’s Topographical Bureau House Number Division; and

WHEREAS, DOB also submitted a letter confirming that the address error had been made by the Topographical Division and that the permits were validly issued to the subject premises, notwithstanding this error; and

WHEREAS, the Board accepts that the permits were validly issued by DOB to the owner of the subject premises; and

WHEREAS, assuming that valid permits had been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance.”; and

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WHEREAS, however, notwithstanding this general framework, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as to substantial construction, the applicant states that the owner has completed excavation, poured 73 percent of the concrete, and driven all of the piles; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of each lot showing the amount of work completed; affidavits from the project manager, indicating the amount of work completed; and copies of pour tickets and cancelled checks; and

WHEREAS, the applicant has also submitted plans reflecting the degree of work completed; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of the representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, specifically, the Board considered that, as of the Enactment Date, excavation for both buildings had been completed; all piles were installed; the foundation for the larger building had been poured; and 80 out of 110 total yards of concrete had been poured over the entire site; and

WHEREAS, the Board’s conclusion is based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts; and

WHEREAS, specifically, the Board has reviewed the cases cited in the opposition’s July 18, 2006 and August 22, 2006 submissions and the applicant’s August 8, 2006 submission, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant’s analysis; and

WHEREAS, the applicant states that the owner has already expended or become obligated for the expenditure of \$184,919.39 out of \$650,500.00 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted pour tickets for foundation work, cancelled checks, and an accounting report; and

WHEREAS, the Board considers the amount of expenditures significant, both in of itself for a project of this size, and when compared against the development costs; and

WHEREAS, again, the Board’s consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights

under a prior zoning regime; and

WHEREAS, as to the serious loss finding, the applicant contends that the loss of \$184,919.39 that would result if vesting were not permitted is significant; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant’s discussion of the diminution in income that would occur if the dwelling number, lot size, FAR, building height, and side yard limitations of the new zoning were imposed; and

WHEREAS, specifically, the applicant notes that the permissible Floor Area Ratio (FAR) would decrease from 1.25 FAR to 0.5 FAR, but more importantly, because of the inability to develop two-family semi-detached homes, the rezoning would require the owner to clear the site, completely re-design the development and re-pour the foundations; and

WHEREAS, the Board agrees that the need to redesign, coupled with \$184,919.39 of actual expenditures that could not be recouped, constitutes a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date; and

WHEREAS, the opposition expressed concerns about various other aspects of this application; and

WHEREAS, specifically, the opposition contended that: (1) the foundation was not complete; (2) the percentage of foundation work was not sufficient to sustain a positive vesting determination; (3) substantial expenditures had not been made or substantiated; (4) work was done prior to permitting; and (5) work was completed while a stop-work order from DOB was in effect; and

WHEREAS, the Board notes that there is no requirement under the common law of vested rights that the foundations under consideration be completed; and

WHEREAS, as to the amount of foundation work performed, the Board reiterates that the degree of construction at the site was substantial enough to meet the guideposts established by case law for such a finding; and

WHEREAS, as to expenditure, the opposition contends that the applicant had not shown that the expenditures made were substantial in relation to the total expected cost of construction; and

WHEREAS, as discussed above, the applicant states that the total anticipated cost of the project is \$650,500.00, including soft costs such as architectural costs, but not costs associated with the purchase; and

WHEREAS, also as discussed above, the Board notes that the applicant submitted pour tickets, cancelled checks, and an accounting report documenting expenditures; and

WHEREAS, as to impermissible work, the Board

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observes that no evidence of such work was submitted into the record; and

WHEREAS, the Board notes that work continued after the change in zoning, but the Board only considered work performed prior to the Enactment Date and costs associated with that work; and

WHEREAS, the Board also notes that DOB confirmed that there were no violations issued related to the work at the site; and

WHEREAS, finally, the opposition states that DOB issued an intent to revoke the New Building Permits on September 6, 2005, and submitted a photograph of what appears to be a stop-work order issued to 1-68 Beach 4th Street (the site's original address) on September 6, 2005 and posted at the site; and

WHEREAS, however, the Board notes that no copy of such a stop-work order was ever submitted into the record; and

WHEREAS, additionally, DOB states that it has no record of a stop-work order being issued to the site on September 6, or at any time prior to the Enactment Date; and

WHEREAS, while the Board was not persuaded by any of the opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the Far Rockaway and Mott Creek Rezoning and that the Buildings do not comply with the new R3X zoning parameters; and

WHEREAS, however, the owner has met the test for a common law vested rights determination, and the owner's property rights may not be negated merely because of general community opposition; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant and the opposition as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested reinstatement of the New Building Permit, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit Nos. 402189038-01 and 402189047-01, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 12, 2006.

12-06-A

APPLICANT – Stuart A. Klein, Esq., for Carl F. Mattone, owner.

SUBJECT – Application January 23, 2006 – Appeal seeking a reconsideration of Department of Buildings refusal to revoke permits for a single family home which allowed numerous violations of the Zoning Resolution required side yards, waterfronts yards, and bulk regulations. Premises is located within R1-2 Zoning District.

PREMISES AFFECTED – 37-19 Regatta Place, bounded by Bay Street and the Little Neck Bay, Block 8071, Lot 32,

Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

THE RESOLUTION:

WHEREAS, the instant appeal, brought by a neighbor to the premises (at 37-25 Regatta Place, Lot 30), comes before the Board in response to a final determination of the Queens Borough Commissioner, dated December 23, 2005 (the "Final Determination"); and

WHEREAS, the Final Determination was issued in response to a November 9, 2005 request from the appellant seeking a reconsideration from DOB as to its refusal to revoke the permit issued in connection with DOB Application No. 401846277 (hereinafter, the "Permit") for construction of a single-family home (the "Building") at the subject premises; and

WHEREAS, the Final Determination reads, in pertinent part:

"This is in reply to your letter dated November 9, 2005 regarding the above referenced property for which you raised a number of zoning objections.

The application in question was re-examined and the following are the findings:

- 1) The construction at the premises meets the minimum FAR and Lot coverage for a single-family residential building in this district. See ZR 62-322. The Final Survey prepared by Barrett, Bonacci & Van Weele, P.C., licensed surveyors, established that the lot landward of the man high water line is 10,756 square feet. The FAR is less than .50 and meets the requirements of ZR 62-122. In this case, where there is no bulkhead line or pierhead line, the shoreline determines the location of the upland lot. See ZR 62-11 (definitions of upland lot and waterfront zoning lot) and ZR 62-31. As per ZR 12-10 definition of shoreline, the shoreline is the mean high water line and in determining the mean high water line, the licensed surveyor followed National Oceanic and Atmospheric administration of the U.S. Department of Commerce ("NOAA") procedures. See Final Survey, Note 2 reflecting compliance with the NOAA procedures.
- 2) The rear yard complies with ZR 62-332. There are no pre-existing non-complying conditions. Since there is no pierhead or bulkhead line, there is no bulkhead for the purposes of waterfront zoning. Pursuant to ZR 62-332 the required rear yard is measured from the shoreline as defined by ZR 12-10. See ZR 12-10, which defines the shoreline as the mean

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- high water line as determined in accordance with NOAA procedures.
- 3) The premises is a single-family residential use in a residential district and is not a non-conforming use as stated in your letter. It is to be noted that the issue raised about non-complying or non-conforming is not valid since the application is filed as a new building complying with the present zoning requirements regardless of any existing condition. Also, be aware that demolition application #401861491 was filed and signed off on 10/13/04.
 - 4) Since the premises met all the requirements of law, no variance of the zoning provision is required.
 - 5) There is no development on piers or platforms and, therefore, all allegations that the construction is contrary to ZR 62-242 and 62-332, have no basis. ZR 62-332 entitled "Rear Yards and Waterfront Yards" requires a 30-foot waterfront yard, which the instant application complies with. This section does not prohibit the natural grade level of the waterfront yard from being raised. Here the level of the waterfront yard is not higher than the base plane, as defined in ZR 12-10. In addition, open terraces and porches, and a wall not exceeding 4'-0" in height, are permitted obstructions in a waterfront yard for single family detached residence, as per ZR 62-332. Consequently, the open terrace and the wall on the premises, which is less than 4'-0" in height are permitted. Furthermore swimming pools, both in ground and above ground are permitted obstructions when accessory to single family as per ZR 62-332.
 - 6) Your objections pertaining to compliance with Tidal Wetland Regulations should be referred to Department of Environmental Conservation (DEC) for their review.
 - 7) There is no bulkhead line and therefore no bulkhead for purposes of zoning. There is no "stabilized natural shore." The existing private wall on the premises is a retaining wall and is not there to stabilize the natural shore. The records of the Department of Small Business Service (DSBS), the agency empowered to issue waterfront permits, indicates no history of applications on file for shoreline stabilization at this location. See attached letter from DSBS dated December 15, 2005. Since there is no stabilized natural shore or bulkhead and the private wall is simply a privately maintained retaining wall, all of the measurements are correctly taken from the mean high water line as per ZR 62-332. The mean high water line is

the shoreline and the proper point at which to measure the waterfront yard.

Finally, I do agree with you about the inaccurate information provided on the initial survey. However, based on information submitted in your letter of July 8, 2005, this office has taken appropriate measures that resulted in the issuance of a stop work order. Upon correction of the zoning calculations and the submission of an accurate survey, this office allowed the construction work to continue."

WHEREAS, as reflected in the Final Determination, the Queens Borough Commissioner denied the appellant's request because all outstanding zoning issues had been resolved and there was no basis to revoke the Permit; and

WHEREAS, accordingly, DOB issued a certificate of occupancy for the Building on January 20, 2006; and

WHEREAS, a public hearing was held on this application on July 18, 2006 after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, in addition to DOB, the owner of the premises appeared through counsel; and

WHEREAS, State Senator Padavan and certain neighbors provided testimony in support of the appellant, citing concerns about the measurement of the Mean High Water Line ("MHWL") and possible compliance issues with applicable side yard requirements; and

WHEREAS, a neighbor also provided testimony in support of the appellant, citing concerns about the measurement of the MHWL and the side yard requirements; and

WHEREAS, the MHWL is a line of reference that is cited in certain ZR provisions (referenced below) and, as noted in an attachment to DOB's July 11, 2006 submission (a letter from a surveyor, dated December 8, 2005, relied upon by DOB), refers to a "line on a chart or map which represents the intersection of the land with the water surface at the elevation of mean high water"; and

WHEREAS, the premises is located within an R1-2 zoning district, on the north side of Regatta Place, where said street dead ends and is parallel to Little Neck Bay to the north and Bay Street to the south; and

WHEREAS, the Board notes that the site is indicated on zoning map 11a; and

WHEREAS, the Board notes that because the premises abuts Little Neck Bay, it considered part of a waterfront area and a waterfront zoning lot, and is subject to special waterfront regulations set forth in Article VI, Chapter 2 of the ZR; and

WHEREAS, the premises is irregularly shaped: the front lot line (on Regatta Place) is 44.36 feet; the front lot line adjoins another lot line which extends approximately 109 ft. to the northwest, which adjoins another lot line running northeast for approximately 98 ft. (abutting the body of water known as Little Neck Bay), which adjoins a lot line running southeast for approximately 91 ft., which adjoins another lot line which runs southwest for approximately 49 ft., which adjoins a lot line adjoining the front lot line running approximately 41 ft.; and

WHEREAS, the lot lines adjoin at odd angles, resulting in

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the site's irregular shape; and

WHEREAS, the site is adjacent to the afore-mentioned neighbor's property; and

WHEREAS, the site has a lot area of 11,801.6 sq. ft., some of which is considered upland, and some of which is considered underwater; and

WHEREAS, ZR § 62-11 provides that an upland lot is "the portion of a waterfront zoning lot located landward of the bulkhead line where a portion of the shoreline projects seaward of the bulkhead line, such land above water shall be included as part of the upland lot"; and

WHEREAS, the Board notes that the Department of City Planning, in its Zoning Handbook, defines bulkhead line as "a line shown on the zoning maps which divides the upland and seaward portions of waterfront zoning lots"; and

WHEREAS, ZR § 11-16 "Pierhead Lines, Bulkhead Lines and Marginal Streets" provides that "in the event a provision of the Resolution refers to a pierhead or a bulkhead line and no such line is shown on the zoning map, then the shoreline shall control."; and

WHEREAS, ZR § 12-10 "shoreline" defines this term as "the [MHWL], as determined in accordance with the procedure set forth by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce" (hereinafter, "NOAA"); and

WHEREAS, based upon documentation submitted by the owner of the premises as to the MHWL, DOB states that the upland lot area is 10,756 sq. ft.; and

WHEREAS, as discussed below, the Board notes that the amount of upland lot area, which is used to calculate floor area and for application of other bulk provisions such as lot coverage, is one of the disputed items in this appeal; and

WHEREAS, in addition to the measurement of upland lot area, the correct measurement of the Building's three chimneys is also at issue in this appeal; and

WHEREAS, because these measurements are contested, five land surveys are part of this record; and

WHEREAS, specifically, the surveys prepared for the owner are dated August 12, 2003 (the "Owner's 2003 Survey") and July 26, 2005 (the "Owner's Final Survey"), both prepared by Baret, Bonacci & Van Weele, P.C.; and

WHEREAS, the appellant cites to a November 18, 1969 survey by Teas and Steinberger (the "1969 Survey"), a July 28, 2006 survey by Rogers Surveying (the "Appellant's First Survey"), and an August 22, 2006 survey relating only to chimney measurement by Arek Surveying Company ("Appellant's Second Survey"); and

WHEREAS, the site is currently improved upon with the Building, a two-story with basement single-family dwelling, with a total floor area of 5,369 sq. ft.; and

WHEREAS, the Board notes that the permitted Floor Area Ratio in the subject zoning district is 0.5; and

WHEREAS, the owner applied for the Permit on April 2, 2004, and submitted the Owner's 2003 Survey with the permit application; and

WHEREAS, on July 23, 2004, DOB issued the Permit and construction commenced; and

WHEREAS, on July 8, 2005, the appellant submitted a

letter to DOB protesting the construction and underlying permit, which resulted in the issuance of a stop-work order on July 15, 2005; and

WHEREAS, on October 11, 2005, upon correction of the zoning calculations and the submission of the Owner's Final Survey, DOB allowed construction to continue; and

WHEREAS, on December 23, 2005, DOB issued the Final Determination for purposes of the instant appeal; and

WHEREAS, as noted above, on January 20, 2006, DOB issued a final certificate of occupancy (No. 401846277F) for the Building; and

WHEREAS, the appellant now challenges DOB's Final Determination on the basis that: (1) the upland lot area, and as a result, the permitted floor area, lot coverage, and waterfront yard (this term is defined below) dimensions, was improperly calculated; (2) the waterfront yard is non-compliant as to its elevation in relationship to the Bay; (3) the Building does not comply with rear and side yard requirements; and (4) the chimneys do not comply with applicable permitted obstruction requirements; and

WHEREAS, in support of the first argument, the appellant contends that the upland portion of the subject waterfront zoning lot was improperly calculated in that DOB relied on an incorrect reference point from which to measure the remote upland boundary line; and

WHEREAS, first, the appellant argues that the Owner's 2003 Survey shows that the upland portion of the site is 9,020 sq. ft.; and

WHEREAS, the appellant disputes the calculation of the upland portion of the site as reflected in the Owner's Final Survey, and notes that there is no reasonable explanation for the discrepancy between the two surveys; and

WHEREAS, the appellant contends that if the upland portion of the lot is actually 9,020 sq. ft., this would mean that the Building, with a floor area of 5,369, is non-compliant (as noted above, the permitted FAR in the subject district is 0.5); and

WHEREAS, the appellant also alleges that the lower upland lot area would result in non-complying lot coverage as well; and

WHEREAS, further, the appellant argues that the boundary of the waterfront yard was improperly determined by DOB; and

WHEREAS, ZR § 62-21 "Waterfront yard" defines this term as "that portion of a waterfront zoning lot extending open and unobstructed from the lowest level of the sky along the entire length of the shoreline, stabilized natural shore, bulkhead or water edge of a platform, as applicable, for a depth or width as set forth in [Article VI, Chapter 2]"; and

WHEREAS, pursuant to ZR § 62-332, in an R1-2 zoning district, a waterfront yard must be provided along the entire length of the shoreline, at a depth of 30 feet, measured from the landward edge of the bulkhead, stabilized natural shore or, in the case of natural shorelines, the MHWL; and

WHEREAS, the appellant asserts that there is a wall located at the rear of the subject site along the water, which is closer inland than the line of reference (the MHWL as established by the Owner's Final Survey) used by the property

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owner and DOB for purposes of calculating the rear dimension of the waterfront yard; and

WHEREAS, appellant contends that this wall can be defined as either a bulkhead or stabilized natural shore, and that the MHWL should therefore not have been used; and

WHEREAS, in support of this argument, the appellant suggests that this wall should be defined as a bulkhead or stabilized natural shore since it appears to be illustrated on the 1969 Survey; and

WHEREAS, the appellant also suggests that the wall meets the common dictionary definition of a bulkhead; and

WHEREAS, appellant concludes that if the wall is the boundary of the waterfront yard, then said yard does not meet the required minimum depth of 30 ft.; and

WHEREAS, DOB responds that appellant's contentions are unconvincing; and

WHEREAS, first, DOB notes that there is no bulkhead line shown on Zoning Map 11a where the premises is located, which, pursuant to ZR § 11-16 as referenced above, supports the use of the MHWL as the correct measuring point for the upland portion of the lot; and

WHEREAS, based upon the MHWL as reflected in the Owner's Final Survey, DOB concludes that the upland portion of the site is 10,756 sq. ft.; and

WHEREAS, since this upland lot area is the basis for the zoning calculations related to the Permit, DOB concludes that the Building complies with FAR and lot coverage requirements, for a single-family residential building in an R1-2 district;

WHEREAS, as to the waterfront yard issue, DOB notes that the 1969 Survey labels the wall in question as a wall and not as a bulkhead or a stabilized natural shore; and

WHEREAS, additionally, DOB argues that the existing wall is not a stabilized natural shore, as the records of the Department of Small Business Services ("DSBS") showed that no applications were on file for shoreline stabilization at the premises; and

WHEREAS, DOB notes that in the absence of any evidence to the contrary, the wall is appropriately classified as a retaining wall; and

WHEREAS, therefore, DOB concludes that since the wall is neither a bulkhead nor a stabilized natural shore, pursuant to the definition of "waterfront yard", the shoreline is the proper point from which to measure yard's rear dimension; and

WHEREAS, since the shoreline controls, DOB appropriately applied the definition of shoreline in the ZR, as referenced above, which requires a calculation of the MHWL; and

WHEREAS, the Board has reviewed these arguments and agrees with DOB; and

WHEREAS, the Board notes that none of the above-mentioned surveys that reflect the wall label it as a bulkhead or stabilized natural shore; rather, they identify it as a retaining wall or seawall; and

WHEREAS, further, there is no evidence whatsoever to suggest that the retaining wall serves any bulkhead or shoreline erosion purpose; and

WHEREAS, the appellant, in its September 6, 2006 submission, asserts that there is a rip-rap bordering the wall,

which constitutes a stabilized natural shore, since it was allegedly placed there to protect against waves and other tidal activity; and

WHEREAS, the Board is troubled by this statement regarding the purported rip-rap, since it contradicts earlier assertions; and

WHEREAS, specifically, the Board notes that in the April 26, 2006 submission, the appellant stated, "No permits or engineering drawings to allow the placement of this rip-rap can be found in any official records for the Subject Premises. By all accounts this alleged rip-rap is nothing more than construction debris illegally dumped by contractors into the Little Neck Bay during the course of the construction of the Subject Premises and hardly qualifies as engineered placement of rocks to act as a wave break."; and

WHEREAS, in a footnote to the statement noted above, the appellant stated that submitted photographs indicate nothing more than "bricks and concrete masquerading as rip-rap"; and

WHEREAS, given this glaring inconsistency and the lack of any evidence that what is identified on some of the surveys as rip-rap serves as a stabilized natural shore, the Board cannot credit the appellant's argument; and

WHEREAS, based upon the above, the Board agrees with DOB as to the calculation of upland lot area and the boundary of the waterfront zoning lot, using the MHWL; and

WHEREAS, however, the appellant makes the alternative argument that even if the MHWL is accepted as the appropriate line of reference, the MHWL measurement accepted by DOB is defective because the Willets Point Station, the station from which the measurement was taken, closed in 2000; and

WHEREAS, the appellant argues that since the MHWL measurement is suspect, then the upland lot area calculation is likewise suspect; and

WHEREAS, additionally, the appellant also suggests that NOAA standards for ascertainment of the MHWL were not followed; and

WHEREAS, DOB argues that since the Appellant's First Survey relies on the same data and that since both it and the Owner's Final Survey reflect the MHWL elevation of 1.7 ft., appellant's argument as to the insufficiency of the measurement is makes no sense and is moot; and

WHEREAS, the Board agrees that the closure of the Willets Point Station is irrelevant; and

WHEREAS, further, the Board notes that the appellant failed to provide proof that there was any deviation from accepted NOAA practice as to ascertainment of the MHWL; and

WHEREAS, the Board notes that the owner of the subject premises submitted a letter from a surveyor dated July 7, 2006, which establishes how the NOAA procedures were used to establish the MHWL for the premises; and

WHEREAS, the appellant failed to provide any persuasive argument as to why the explanation in the July 7, 2006 letter should not be credited by the Board; and

WHEREAS, thus, the Board concludes that the calculation of the MHWL was based upon sound

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methodology and that it should be credited; and

WHEREAS, based upon the above, the Board finds the appellant's first argument – that the upland lot area and waterfront yard dimensions were calculated incorrectly based upon an improper line of reference, or based upon improper methodology – to be without merit; and

WHEREAS, as to the second argument, the appellant suggests that the required waterfront yard is non-compliant with yard requirements because the level of the waterfront yard has been raised; and

WHEREAS, specifically, the appellant contends that the owner of the premises illegally increased the elevation of the waterfront yard by raising the height of this wall; and

WHEREAS, the appellant argues that this renders the waterfront yard non-compliant, and cites to another provision of ZR § 62-332, which provides that the level of the waterfront yard shall not be higher than the level of the top of the adjoining existing bulkhead; and

WHEREAS, however, as already discussed, DOB maintains and the Board agrees that there is no bulkhead at the subject premises; and

WHEREAS, additionally, DOB notes that pursuant to ZR § 62-332, walls not exceeding four feet in height are permitted obstructions in a waterfront yard for single-family detached residences; and

WHEREAS, DOB determined that the wall is less than four feet; and

WHEREAS, accordingly, it is a permitted obstruction in the waterfront yard; and

WHEREAS, based upon the above, the Board finds the appellant's second argument to be without merit; and

WHEREAS, as to the third argument, the appellant contends that the proposed development fails to comply with: (1) rear; and (2) side yard regulations; and

WHEREAS, as to the rear yard, the appellant argues that a rear yard is required along the one of the shared lot lines between Lot 32 (the premises) and Lot 30 (the appellant's premises); and

WHEREAS, the appellant relies on a May 28, 1982 DOB Memo regarding "Yards in Irregular Lots" to support the claim that a rear yard is required along the line parallel to the waterfront yard which abuts the neighbor's yard; and

WHEREAS, the appellant argues that the 1982 Memo dictates that a 20 ft. yard would be required along the subject lot line; and

WHEREAS, DOB's first response is that the subject lot line is a side lot line, not a rear lot line; and

WHEREAS, DOB notes that pursuant to ZR § 12-10, a rear lot line is "any lot line of a zoning lot except a front lot line, which is parallel or within 45 degrees of being parallel to, and does not intersect, any street line bounding such zoning lot" and a side lot line is "any lot line which is not a front lot line or a rear lot line."; and

WHEREAS, DOB cites to the January 24, 2005 Reconsideration signed by former Queens Borough Commissioner Magdi Mossad, which relied on a 2004 update to the Owner's 2003 Survey, illustrating that that the northeast property line is at 54 degrees, 48 minutes from the street line;

and

WHEREAS, DOB also notes that even if the subject side lot line were to be considered a rear lot line, as appellant alleges, that ZR § 62-332 specifically provides that rear yard regulations are inapplicable on waterfront zoning lots; and

WHEREAS, thus, in either case, the 1982 Memo would not apply; and

WHEREAS, for the reasons argued by DOB, the Board agrees and finds that the appellant's argument as to the alleged rear yard requirement is without merit; and

WHEREAS, as to side yard requirements, the appellant argues that the Building does not comply with the minimum required total width of 20 feet, with a minimum of eight feet in width for each yard; and

WHEREAS, the Board notes that the appellant has not submitted an analysis of the width of the side yards to substantiate claims that they are not in compliance; and

WHEREAS, DOB notes that the Owner's Final Survey for the premises, accepted by DOB, illustrates compliant side yards: one side yard with a width of 12 feet and the other side yard with a width of 8.8 feet and the total width of 20.8 feet; and

WHEREAS, therefore, the Board finds the appellant's third argument – alleging non-compliance as to rear yard and side yard requirements – to be without merit; and

WHEREAS, as to the fourth argument, the appellant contends that the Building's chimneys are non-compliant; and

WHEREAS, first, the appellant claims that the chimneys, as built, exceed the permitted degree of encroachment into the side yards; and

WHEREAS, pursuant to ZR § 62-13, the provisions of ZR § 23-44 – "Permitted Obstructions in Required Yards or Rear Yard Equivalents" apply to the subject premises; and

WHEREAS, pursuant to ZR § 23-44, chimneys are permitted obstructions so long as they do not: (1) project more than three feet into the side yards; and (2) exceed in area two percent of the required side yard; and

WHEREAS, the Board notes that DOB and the property owner provided calculations showing that only a portion of the two chimneys project into the side yard and that, under two separate calculations, the chimneys do not exceed the permitted obstruction parameters; and

WHEREAS, DOB also reviewed the compliance of the chimneys at the premises and determined that the owner's chimney projection calculations show that the chimneys at the premises do not project more than three feet into, and do not exceed two percent of the area of, the required side yards; and

WHEREAS, moreover, the Board notes that it is apparent that appellant, in making this encroachment argument, mistakenly cites to the full dimensions of each of the chimneys, rather than only the portion of the chimneys that extends beyond the perimeter wall and into the side yard; and

WHEREAS, the Board observes that only that portion of the chimney that encroaches into the required side yard is subject to permitted obstruction provisions, not the entire chimney itself; and

WHEREAS, the Board also notes that, while the appellant submitted the Appellant's Second Survey in support of this argument, no analysis accompanies this survey to

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show that the chimney encroachment within the side yard exceeds the two percent limit; and

WHEREAS, finally, the Board observes that the westernmost of the Building's three chimneys does not even encroach into the side yard; and

WHEREAS, accordingly, the Board finds that there is no merit to the appellant's side yard encroachment argument; and

WHEREAS, second, an issue arose as to whether the chimneys as built violate height and setback requirements applicable on waterfront blocks, as set forth at ZR § 62-34; and

WHEREAS, more specifically, the issue is whether the heights of the chimneys are non-compliant as to ZR 23-661 "Required side and rear setbacks for tall residential buildings in low bulk districts", which provides for a 30 ft. elevation maximum; and

WHEREAS, a consultant of the owner disagrees that there is any such issue, and submitted an affidavit explaining why this argument fails; and

WHEREAS, the owner's expert disclaims the applicability of ZR 23-611, noting that ZR § 62-341(b)(1)(i) provides that the height and setback limitation of ZR § 23-60 et seq. (including ZR § 23-661) does not apply to the site; and

WHEREAS, however, the expert notes that ZR § 62-341(a)(4) provides that for waterfront lots, the permitted obstruction provisions of ZR § 23-62 are applicable; and

WHEREAS, the expert notes that ZR § 23-62(b) provides that "chimneys or flues with a total width not exceeding 10 percent of the aggregate width of the street walls of a building" within the list of permitted obstructions that may penetrate a maximum height limit; and

WHEREAS, the expert indicates that the aggregate width of the street walls (maximum widths of all street walls of the building within 50 feet of the street line) is 44.92 feet; the total width of chimneys parallel to the street wall and within 50 feet of the street line is 3'-8", which is less than ten percent of the aggregate width of street walls; and

WHEREAS, additionally, the Board notes that DOB relies on the Owner's Final Survey, which shows that the chimneys are in compliance with ZR § 23-62(b); and

WHEREAS, finally, the Board notes that the Appellant's Second Survey and accompanying remarks did not provide any analysis nor discussion that conclusively proved that the chimneys exceeded what is permitted under ZR § 23-62(b); and

WHEREAS, accordingly, the Board finds that there is no merit to the appellant's height and setback encroachment argument; and

WHEREAS, therefore, the Board finds the appellant's fourth argument to be without merit; and

WHEREAS, finally, the Board notes that the appellant argues in its August 29, 2006 submission that the hearing should have been continued, and alleges that the owner of the premises engaged in misrepresentation before the Board; and

WHEREAS, the Board has reviewed the record and has determined that there is no corroborating evidence in support of this claim; and

WHEREAS, in conclusion, the Board has reviewed the record and is not persuaded by any of the appellant's arguments.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Queens Borough Commissioner, dated December 23, 2005, refusing to revoke building permits issued in connection with DOB Application No. 401846277 is hereby denied.

Adopted by the Board of Standards and Appeals, September 12, 2006.

93-06-A

APPLICANT – Sheldon Lobel, P.C., for Mei Hsien Peng, owner

SUBJECT – Application May 9, 2006 – Proposed construction of a 3 story + attic four family dwelling fronting on a unmapped street contrary to General City Law Section 36 and does not have adequate perimeter street frontage as per Building Code 27-291. Premises is located within the R5 Zoning district.

PREMISES AFFECTED – 50-08 88th Street, westerly side of 88th Street south of 50th Avenue, Block 1835, Lot 36, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Zara F. Fernandes.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 11, 2006, acting on Department of Buildings Application No. 40224159, reads, in pertinent part:

“Objection #15, Proposed development is fronting on an unmapped street and that is contrary to General City Law, Section 36 subdivision 2.

Objection #21, Proposed building does not have the adequate perimeter street frontage required (eight percent) as per BC 27-291. Proposed building is fronting in an unmapped street.”; and

WHEREAS, a public hearing was held on this application on September 12, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated July 24, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate

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evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, June 22, 2006, acting on Department of Buildings Application No. 402373613, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received September 8, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

135-06-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; John & Evelyn Maher, lessee.

SUBJECT – Application June 27, 2006 – Proposed reconstruction and enlargement of a one family house not fronting a mapped street contrary to GCL 36 and the upgrade of the private disposal system located in the bed of service road contrary to DOB policy. Premise sis located within the R4 Zoning District.

PREMISES AFFECTED – 37 Newport Walk, East side of New Port Walk 110.19 south of Oceanside Avenue. Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 22, 2006, acting on Department of Buildings Application No. 402373613, reads, in pertinent part:

“A1- The site and building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued per Article 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space and is therefore contrary to Section 27-291 of the Administrative Code.

A2- The upgraded private disposal system is in the bed of a private service road contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on September 12, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated August 1, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, June 22, 2006, acting on Department of Buildings Application No. 402373613, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received June 27, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

34-06-A

APPLICANT – Victor K. Han, for Dimitrios Halkiadakis, owner

SUBJECT – Application March 1, 2006 – Proposed construction of a three family, three story residence with accessory three car garage located within the bed of a mapped street, contrary to Section 35 of the General City Law. Premises is located in a R4 Zoning District.

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PREMISES AFFECTED – 41-23 156th Street, east side of 156th Street, 269’ north of Sanford Avenue, Block 5329, Lot 15, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 19, 2006, at 10 A.M., for postponed hearing.

120-06-A

APPLICANT – Eric Palatnik, P.C., for Harry & Brigitte Schalchter, owners.

SUBJECT – Application June 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Current zoning district is R4-1

PREMISES AFFECTED – 1427 East 17th Street, between Avenue N and Avenue O, Block 6755, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING

TUESDAY AFTERNOON, SEPTEMBER 12, 2006

1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Collins.

ZONING CALENDAR

146-04-BZ

CEQR #06-BSA-156R

APPLICANT – Joseph Margolis for Jon Wong, Owner.

SUBJECT – Application April 5, 2006 – Pursuant to Z.R. § 72-21 – to allow the residential conversion of an existing manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Joseph Margolis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 16, 2004, acting on Department of Buildings Application No. 500632880, reads, in pertinent part:

“The proposed application to change an existing building in a M3-1 District to Residential . . . requires variances from the board of Standards and Appeals, as per Section 42-00”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M3-1 zoning district, the proposed conversion of an existing seven-story manufacturing building to a 92-unit Use Group 2 multiple dwelling, contrary to ZR 42-00; and

WHEREAS, the proposed residential building, which will be constructed using environmentally friendly (or “green”) technology, will have a total gross square footage of 126,852 sq.

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ft., which is the exact same square footage as exists in the manufacturing building; and

WHEREAS, the proposed building will rise to a total height of 92'-8", with setbacks at various levels; and

WHEREAS, 92 accessory parking spaces will be provided in a proposed public parking garage located across the street on a separate lot (Lot 50); as reflected as a condition below, this amount of accessory parking shall be provided in the garage for the life of the converted building; and

WHEREAS, because of the change to residential use, and the location of the site on a waterfront block, a shore public walkway ("the esplanade"), an upland connection and a visual corridor are required and will be provided on the subject site; and

WHEREAS, to create sufficient light and air for the proposed residential units, certain portions of the existing building will be removed in order to create outer courts; and

WHEREAS, the Board notes that initially the applicant proposed the recapture of the removed square footage, and additionally proposed the construction of approximately 4,000 sq. ft. of new floor space; and

WHEREAS, as discussed below, the Board expressed reservations about this proposal, and asked the applicant to justify both the recapture of the removed square footage and the addition of new square footage; and

WHEREAS, the Board was concerned that there was no justification for the initial proposal as the minimum variance in light of the alleged hardships; and

WHEREAS, after performing certain feasibility analyses, discussed below, the applicant subsequently revised the proposal to the current version, which reflects the recapture of the removed floor space but retains the existing square footage of the manufacturing building; no additional square footage is proposed; and

WHEREAS, a public hearing was held on this application on February 28, 2006 after due notice by publication in the *City Record*, with continued hearings on May 16, 2006 and July 25, 2006 and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the Staten Island Borough President James Molinaro, City Council Member Michael McMahon and State Senator Diane Savino also support this application; and

WHEREAS, the subject premises is located on Edgewater Street between Salvator Terrace and Sylva Lane, and has a total lot area of 124,240 sq. ft.; and

WHEREAS, Edgewater Street is, at 50 ft. in width, a narrow street; and

WHEREAS, as noted above, the site abuts the New York Bay, and a portion of the site (approximately 86,221 sq. ft.) is under water; the remainder (38,019 sq. ft.) is above water; and

WHEREAS, the upland portion of the site is occupied by

an existing seven-story manufacturing building, with setbacks at various floors; and

WHEREAS, as originally constructed in 1917, the building was four stories, and was designed for and used by the Wrigley Gum Company for the manufacture of chewing gum; and

WHEREAS, the applicant states that a seven-story addition was connected to the existing four-story building in 1926; and

WHEREAS, the applicant states that gum production ceased in 1949; and

WHEREAS, the applicant further states that the building has been vacant for the past twelve years; and

WHEREAS, because of the inability to locate a conforming user for the building in the past twelve years, the applicant proposes its residential conversion; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming building: (1) the existing building is obsolete for its intended purpose, and can not be feasibly retrofitted for conforming use; (2) the site is located on a narrow street, which makes it infeasible to construct loading docks that would be sufficient for modern industrial users; and (3) the site is within an "Erosion hazard area", as designated by the City's Department of Environmental Protection; and

WHEREAS, as to obsolescence, the applicant notes the following: (1) that all of the floors are burdened with multiple interior and exterior mushroom columns, which are closely spaced and do not allow for the efficient use of the floor plates; (2) the floor-to-ceiling heights vary from floor to floor (from 7'-2" to 12'-0"), and are generally insufficient for the needs of modern manufacturing users; and (3) the building does not provide adequate loading docks for the size of trucks typically used by modern users; and

WHEREAS, the Board has reviewed the plans showing the existing conditions and has visited the site, and agrees that the building is obsolete for its intended purpose, given that it was designed for a specific single user, constructed in two stages, and cannot be feasibly retrofitted for a modern industrial user; and

WHEREAS, as to the second argument, the Board observes that the narrow width of the street and the narrow frontage of the site on the street exacerbates the already constrained loading dock possibilities; and

WHEREAS, as to the third argument, the applicant notes that to address the possibility of erosion from flooding, the lowest level of the building must be raised to above the 100 year floor line, which would result in an eight foot floor to ceiling height that is not viable for a modern conforming user; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the current applicable zoning regulations; and

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WHEREAS, the applicant initially submitted a feasibility study which analyzed a conforming office building, with 126,852 sq. ft. of office space; and

WHEREAS, the study concluded that this conforming scenario would not realize a reasonable return, since it would require a substantial retrofit of the existing building in order to overcome the structural deficiencies noted above; the cost of such a retrofit would not be overcome by the estimated rents for the office space; and

WHEREAS, the Board notes that at its suggestion, the site valuation was revised to reflect only the upland portion of the site; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the immediate context near the site is as follows: to the north is a warehouse and small marina, to the south is a shipyard, and to the west is another warehouse and a site that is subject to a residential variance granted by this Board (currently undeveloped); and

WHEREAS, at the request of the Board, the applicant submitted an 800 ft. radius diagram; this diagram reflects that within this radius, five lots are occupied by commercial uses, five lots are occupied by industrial uses, five are occupied by warehouse uses, and approximately 55 are occupied by residential uses; and

WHEREAS, the Board has reviewed the submitted radius diagram and conducted its own site visit, and agrees that the character of the neighborhood is appropriately characterized as mixed-use; and

WHEREAS, as to the proposed envelope of the building, the Board notes that the overall height and floor area will remain as currently exists, and that all units will possess legal light and air as a result of the proposed structural modifications; and

WHEREAS, the Board also notes that any concern about parking impact is alleviated through the provision of 92 accessory parking spaces in the proposed adjacent garage; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the unique physical conditions cited above; and

WHEREAS, as noted above, the Board expressed reservations about the initial proposal of both a recapture of the eliminated square footage and an increase in overall square footage; and

WHEREAS, the Board noted that the existing building is already over-built, and questioned why both the recapture and the increase were necessary; and

WHEREAS, the Board was also concerned about the use of the off-site garage building for accessory parking purposes, and questioned why the accessory parking could not be provided on-site; and

WHEREAS, the Board also questioned the potential inclusion of the "green" building costs, and suggested to the applicant that such costs be eliminated (if included) from the analysis to ensure that they did not distort the analysis such that additional floor space would be necessary; the Board notes that such costs are a development choice that should not have a bearing on the degree of relief sought; and

WHEREAS, accordingly, the applicant analyzed the following scenarios to address these concerns: (1) a residential building with on-site parking and no recapture of square footage; (2) a residential building with off-site parking and no recapture or increase of square footage; and (3) a residential building with off-site parking and recapture of square footage, but no increase; and

WHEREAS, none of the scenarios reflected the "green" building costs in any respect; and

WHEREAS, the applicant claimed that the first scenario did not realize a reasonable return, because no practical layout of the required amount of parking spaces could be achieved; and

WHEREAS, the Board observes that on-site parking is impractical because the column spacing of the building does not allow for the reasonable layout of the needed amount of parking; specifically, if the required amount of spaces is provided, the resulting layout does not provide sufficient aisle widths, stall widths, or turning radius; and

WHEREAS, based upon the above, the Board concludes that the applicant has proven that this scenario is infeasible; and

WHEREAS, the applicant claimed that the second scenario also did not realize a reasonable return, but that the third scenario did; and

WHEREAS, in addition to these three scenarios, the applicant also performed analyses of scenarios that made specific reference to the esplanade; and

WHEREAS, the Board notes that the esplanade is required due to the change to residential use; accordingly, the cost of the construction of the esplanade is a legitimate development cost that has been included in each of the feasibility studies; and

WHEREAS, the applicant conducted an analysis with esplanade costs of the following scenarios: (1) a building with the recapture of eliminated floor space; and (2) a building without the recapture of this space; and

WHEREAS, the analysis concluded that the scenario without the recapture would not realize a reasonable return, but that the scenario with the recapture would; and

WHEREAS, in order to be conservative, the applicant also did an analysis of the same two scenarios without esplanade costs; and

WHEREAS, the analysis concluded that the scenario

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without recapture showed a very slight positive return, but not a high enough return to make the project feasible; and

WHEREAS, in sum, the applicant concluded that after including esplanade costs in the analysis of the proposal, the return is still reasonable and reflects the minimum variances; and

WHEREAS, because the applicant modified the proposed building to the current version, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04BSA156K dated April 5, 2004; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: a April 2004, Environmental Assessment Statement and a May 2005 Phase I Environmental Site Assessment Report; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, noise and air quality impacts; and

WHEREAS, a Restrictive Declaration was recorded on August 16, 2005 for the subject property to address hazardous materials concerns; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M3-1 zoning district, the proposed conversion of an existing seven-story manufacturing building to a 92-unit Use Group 2 multiple dwelling, contrary to ZR 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with

this application marked "Received September 8, 2006"- fourteen (14) sheets; and *on further condition*:

THAT a minimum of 92 accessory parking spaces shall be provided in the public parking garage on Lot 50 for the lifetime of the proposed building;

THAT the above condition shall be reflected on the certificate of occupancy;

THAT no grant is being made as to the development of the garage on Lot 50;

THAT the building, upon conversion, shall not exceed a total gross square footage of 126,852 sq. ft., as reviewed by DOB;

THAT all mechanical deductions shall be as reviewed and approved by DOB;

THAT no building permit for the proposed building shall be issued by DOB prior to the issuance of a permit for the public parking garage on Lot 50;

THAT no temporary or permanent certificate of occupancy shall be issued by DOB prior to the issuance of a permanent certificate of occupancy for the public parking garage;

THAT all waterfront zoning requirements shall be complied with and all approvals related to such requirements must be obtained, as determined by DOB, prior to the issuance of any building permit;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

381-04-BZ CEQR #05-BSA-068K

APPLICANT – Sheldon Lobel, P.C., for Zvi Realty, LLC, owner.

SUBJECT – Application December 2, 2004 – Variance pursuant to Z.R. Section 72-21 to permit the construction of a four-story building to contain 20 residential units with 10 parking spaces. The site is currently an undeveloped lot which is located in an M1-1 zoning district. The proposal is contrary to district use regulations pursuant to Z.R. Section 42-00.

PREMISES AFFECTED – 83 Bushwick Place a/k/a 225-227 Boerum Street, northeast corner of the intersection of Boerum Street and Bushwick Place, Block 3073, Lot 97, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

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For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 19, 2004, acting on Department of Buildings Application No. 301866032, reads in pertinent part:

“The proposed construction of a residential building is not permitted in an M1-1 zoning district as per ZR Section 42-00.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an M1-1 zoning district, a four-story residential development with an FAR of 2.38, 20 dwelling units, nine accessory parking spaces, a streetwall height of 32’-6”, and a total height of 51’-6” (including mechanicals), which is contrary to ZR § 42-10; and

WHEREAS, the applicant initially submitted a proposal for a four-story residential building with an FAR of 2.54, 26 dwelling units, ten accessory parking spaces, a street wall height of 48’-10” without a setback, and an overall building height of 54’-4” (including mechanicals); and

WHEREAS, the Board finds the current proposal, with the reduced street wall height and the provision of a setback, to be more contextual with the residential buildings in the vicinity; and

WHEREAS, a public hearing was held on this application on June 13, 2006, after due notice by publication in the *City Record*, with a continued hearing on July 25, 2006, and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of the application on the condition that there be a formal arrangement for the provision of affordable housing units within the development; and

WHEREAS, in response to the Community Board’s request, the applicant represents that two affordable housing units will be provided; and

WHEREAS, the subject premises is a 5,559 sq. ft. irregularly-shaped lot, located on the northeast corner of Bushwick Place and Boerum Street, in the East Williamsburg section of Brooklyn; and

WHEREAS, the site is undeveloped and used for vehicle parking, and is adjacent to a residential building on Boerum Street and a warehouse on Bushwick Place; and

WHEREAS, adjacent to the site, Bushwick Place is 46

feet wide (and therefore considered a narrow street) and dead ends to the south at Boerum Street; Boerum Street is 60 feet wide; and

WHEREAS, the applicant represents that the site was formerly improved upon with two-story and three-story residential buildings, and a one-story commercial building, which were all demolished by 1995; the site has been undeveloped since then; and

WHEREAS, as noted above, the applicant proposes to construct a four-story residential building, with a total residential FAR of 2.38, a total residential floor area of 13,251.2 sq. ft., a street wall height of 32’-6”, a total height of 51’-6” (including mechanicals), 20 dwelling units, and nine accessory parking spaces; and

WHEREAS, since the proposed residential use is not permitted in the subject zoning district, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site’s small size and irregular shape; (2) the site is undeveloped and adjacent to a residential use; and (3) the historic use of, and failed development attempts at, the site; and

WHEREAS, as to lot size, the applicant states that the small lot size does not allow for the creation of a viable conforming industrial building, with floor plates sufficient for modern manufacturing uses; and

WHEREAS, as to the lot shape, the applicant notes that the site has approximately 90 feet of frontage along Bushwick Place and 91 feet along Boerum Street, with depths ranging from 50 feet into the lot on Bushwick Place and 77 feet into the lot from Boerum Street; and

WHEREAS, the applicant also notes that Bushwick Place is only 46 feet wide along the site’s frontage and that it intersects Boerum Street at an angle, which results in the site’s acutely angular shape; and

WHEREAS, the applicant asserts that the irregular shape limits the site’s as-of-right development potential because 59 percent of a conforming building’s exterior walls would have street frontage and street frontage walls are more costly to construct than interior facing walls; and

WHEREAS, in order to establish the uniqueness of the small lot size, the applicant submitted a 400-ft. radius diagram with a corresponding table identifying the conforming uses and lot sizes, which illustrates that all but one of the conforming uses in the M1-1 district occupy significantly larger lots, ranging in size from 9,310 sq. ft. to in excess of 100,000 sq. ft.; and

WHEREAS, additionally, the applicant notes that most of these larger sites have better access to wide streets access, such as Johnson Avenue (which is 60 feet wide), as opposed to the narrow Bushwick Place; and

WHEREAS, the Board agrees that the size of the site inhibits the development of a conforming manufacturing building since it would have insufficient floor plates; and

WHEREAS, the Board also agrees that the site’s shape would lead to increased construction costs related to the

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construction of more exterior wall, but notes that such costs are minimal; and

WHEREAS, as to the adjacency to a residential building, the Board acknowledges that this may not always be, in of itself, a basis for a claim of unnecessary hardship, but it can often contribute to a hardship claim, since the site is typically less desirable for conforming uses and therefore less marketable; and

WHEREAS, the applicant represents that the site has a history of residential use; and

WHEREAS, the applicant submitted Sanborn Maps from 1965 to 1980, which reflect that the lot was developed with a two-story residential building and a three-story residential building; over the course of time, the buildings were demolished; and

WHEREAS, the applicant represents that attempts have been made during the past 15 years to develop a conforming use at the premises, but these attempts failed because of the problems associated with the unique physical features, including the adjacency to residential use; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following as-of-right scenarios: a one-story manufacturing building and a two and a half-story community facility building; and

WHEREAS, the applicant concluded that such scenarios would not result in a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, in support of this representation, the applicant submitted a detailed land use survey and map; and

WHEREAS, the map covers an approximately eight block area around the subject site, and includes both manufacturing and residential zoning districts; and

WHEREAS, the Board observes that the subject Boerum Street block-front is occupied by at least five residential buildings and that the portion of the block across Boerum Street to the south (Block 3082) within the radius is occupied by ten residential buildings; and

WHEREAS, the Board observes that there is also an R6 zoning district across Bushwick Place; and

WHEREAS, additionally, the radius diagram indicates that there are 21 residential buildings fronting Boerum Street within the radius of the site; and

WHEREAS, the applicant concludes, and the Board

agrees, that the area is best characterized as mixed-use, given both the proximity of a residential district and the fact that a large number of sites within the subject manufacturing district are occupied by residential uses; and

WHEREAS, based upon the above, the Board finds that the introduction of 20 dwelling units (which reflects a reduction from the 25 units initially proposed) on this street will not impact any conforming uses nor change the character of the neighborhood; and

WHEREAS, as to the envelope of the building, the Board expressed concern about the applicant's initial proposal, noting specifically that the streetwall height along Boerum Street and the total height were not contextual with the other nearby residential buildings; and

WHEREAS, the Board also asked the applicant to lower the cellar in order to reduce the overall height and to set the fourth floor back so as to more closely match the streetwall of the adjacent residential buildings; and

WHEREAS, additionally, the Board notes that the applicant initially proposed that the building's entrance be located on Bushwick Place; and

WHEREAS, at hearing, the Board suggested that the building's entrance be relocated to Boerum Street as this would be more contextual with adjacent residential uses; and

WHEREAS, the applicant revised the proposal to show: (1) a ten-foot setback above the third floor and a streetwall height of 32'-6", (2) the cellar lowered to 2'-6" above grade, thereby reducing the overall height of the building by nearly three feet to 51'-6" (including mechanicals), and (3) the entrance on Boerum Street; and

WHEREAS, as noted above, the Board finds that these modifications enhance the compatibility of the building with the context of the neighborhood; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board notes that the case is predicated on the shape and size of the lot and its adjacency to a residential building, and the inability to develop the site in a way that would be viable to a modern conforming user; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as to the minimum variance, the applicant's revised plans, with the setback above the third floor, reduces the proposed floor area by nearly 1,000 sq. ft. and reduces the FAR from 2.54 to 2.38; and

WHEREAS, the revisions also reduced the unit count to 20, from the originally proposed 25; and

WHEREAS, for the reasons above, Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

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WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA068K, dated April 5, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's (DEP) Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) an Environmental Assessment Statement dated April 5, 2005; and (2) a Phase I Environmental Site Assessment dated January 2005; and

WHEREAS, DEP requested the appropriate window/wall attenuation necessary to achieve an interior noise level of 45 dBA or lower in a closed-window condition; an alternate means of ventilation (central air-conditioning or air-conditioning sleeves) is necessary in order to maintain a closed-window condition; and

WHEREAS, these submissions specifically examined the proposed action for potential noise, air quality and hazardous materials impacts; and

WHEREAS, a Restrictive Declaration to address potential hazardous materials impacts was executed on April 28, 2006 and submitted for recordation on May 12, 2006; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a lot within an M1-1 zoning district, a four-story residential development with 20 dwelling units and nine accessory parking spaces, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 8, 2006"-(13) sheets and "Received September 11, 2006"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: four stories; 20 dwelling units; a residential

and total FAR of 2.38; a street wall height of 32'-6"; and a total height of 51'-6" (including mechanicals);

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT all dwelling units shall provide the appropriate window/wall attenuation necessary to achieve an interior noise level of 45 dBA or lower in a closed-window condition; an alternate means of ventilation (central air-conditioning or air-conditioning sleeves) is necessary in order to maintain a closed-window condition;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

124-05-BZ CEQR #05-BSA-131M

APPLICANT – Greenberg Traurig LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.

SUBJECT – Application May 20, 2005 – Under Z.R. § 72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to Z.R. §§ 35-00, 23-145, 35-52, 23-82, 13-143, 35-24, and 13-142(a).
PREMISES AFFECTED – 482 Greenwich Street, Block 7309, Lot 21 and 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: Doris Diether, Community Board #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

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THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 31, 2005, acting on Department of Buildings Application No. 104054871, reads, in pertinent part:

“Proposed . . . lot coverage is not permitted in that it is contrary to ZR 23-145 of 80% for corner lot.

Proposed partial piece of building does not comply with side yard regulations. In addition the same area is subject to court regulations and does not comply with court regulations. ZR 35-32 and ZR 23-83.

Proposed parking area exceeds size permitted as per ZR 13-143. Maximum size permitted [is] 200 times 2 cars and 300 times 1 car for commercial store. (Maximum 700 square feet).

Proposed building exceeds setback regulations as per ZR 35-24.

Proposed location of curb cut for parking access is not permitted in that it is contrary to ZR 13-142A ‘shall be located not less than 50 feet from the intersection of any two street lines’”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C6-2A zoning district, the proposed construction of an eleven story mixed-use residential, commercial, and community facility building, which does not comply with applicable zoning requirements concerning lot coverage, setback, side yard, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-143, 35-24, and 13-142A; and

WHEREAS, the building, which will be built in accordance with the ZR’s Quality Housing regulations, will have a total Floor Area Ratio (FAR) of 6.5 (20,255 sq. ft.), a residential FAR of 6.019 (18,877.7 sq. ft.), a commercial FAR of 0.307 (962.6 sq. ft.), a community facility FAR of 0.132 (415.0 sq. ft.); and

WHEREAS, ten dwelling units and three parking spaces will be provided; and

WHEREAS, the proposed street wall height is 60 ft., and the total height is 120 ft.; and

WHEREAS, the FAR, density, street wall height, and total height comply with applicable C6-2A district regulations; in particular, the FAR complies with the 6.5 maximum for buildings with a community facility component; and

WHEREAS, the Board also notes that all of the proposed uses are as of right; and

WHEREAS, however, the proposed building is non-compliant as follows: (1) the proposed lot coverage is 96.6% (80% is the maximum permitted); (2) the proposed trapezoidal building form, at the proposed lot coverage, will not comply with the required width for a side yard, or, alternatively, a court; (3) a small portion of the dormer will be located within the required 15 ft. setback at the 10th and 11th floors; (4) the proposed garage area is 862.9 sq. ft. (700 sq. ft. is the maximum permitted, based upon the proposed occupancies); and (5) the curb cut will be approximately 34 ft. from the intersection of Greenwich and Canal Streets (curb cuts are required to be at least 50 ft. away from the intersection); and

WHEREAS, the Board notes that the application as originally filed contemplated an eleven-story building, with the same waivers as indicated above, but also with a non-complying FAR of 7.98 (6.02 is the maximum permitted), a street wall height of 111 ft. (85 ft. is the maximum street wall height), and no setback at 85 ft. (a fifteen ft. setback is required at this height); and

WHEREAS, as discussed in greater detail below, the Board expressed serious concerns about the project as originally proposed, primarily because it did not credit certain of the alleged unique physical conditions that allegedly created the need for the FAR, street wall and setback waivers, and, to a lesser extent, because the proposed building appeared to be out of context with the surrounding built conditions; and

WHEREAS, while the applicant continues to contest the position of the Board as to its view as to the alleged hardships, the proposal was nevertheless modified to the current version near the end of the hearing process; and

WHEREAS, a public hearing was held on this application on January 24, 2006 after due notice by publication in the *City Record*, with continued hearings on April 25, 2006 and June 20, 2006 and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 2, Manhattan, upon review of the initial version of the application, supported waivers for lot coverage, curb cut distance, and parking, but expressed opposition to the proposed FAR waiver; and

WHEREAS, the Department of City Planning opposed the initial version of this application, expressing concerns about the proposed FAR and resulting street wall height, and noting that the degree of waiver was not warranted and that the street wall height would be out of character with the built conditions in the neighborhood; and

WHEREAS, this application was opposed by the Canal West Coalition and certain individual neighbors of the site (hereinafter, collectively referred to as the “opposition”); relevant arguments of the opposition are discussed below; and

WHEREAS, the subject premises is located on the northwest corner of the intersection of Canal and Greenwich Streets, and has a lot area of 3,136 sq. ft.; and

WHEREAS, the applicant notes that the site is located near the historic shoreline and is within Zone A – High Hazard Flood Plain; and

WHEREAS, while the site is currently in a C6-2A zoning district, it was formerly located within an M1-6 zoning district; the site was rezoned as part of the Hudson Square rezoning, approved by the City Council in 2003; and

WHEREAS, the applicant notes that during the CEQR review of the rezoning, what is known as an “E” designation was attached to the site, due to its history of gas station use; and

WHEREAS, the applicant states because of the “E” designation, prior to development, testing of the soil is mandated and soil remediation may be needed; further, the “E”

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designation also establishes minimum noise attenuation requirements for development on the site, due to its location on Canal Street; and

WHEREAS, the site has 59 ft. of frontage on Greenwich Street, and approximately 96 ft. of frontage on Canal Street; and

WHEREAS, the applicant states the site is irregularly shaped, since the two frontages meet at an acute angle, forming a 55 degree wedge at the intersection, and since the northern lot line of the site is bowed and pinched in the center; and

WHEREAS, the site is currently fully paved and partially occupied by a one-story brick garage and former gas station at its western edge, and with a billboard on the eastern side; all of the existing improvements on the site will be removed in anticipation of the new building; and

WHEREAS, the applicant states that the commercial space, the community facility space, the three-car garage, and the residential lobby will be located on the first floor of the proposed building, and the residential units will be located on the second through 11th floors; outdoor terraces will also be provided for some of the units, and recreation space will be located on the second floor; and

WHEREAS, as noted above, however, the proposed building requires certain waivers; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying building: (1) the site is small and irregularly shaped; (2) the site is proximate to a major thoroughfare, Canal Street; (3) the site is burdened with an "E" designation; and (4) the site is within the flood plain; and

WHEREAS, as to size and shape, the applicant states this causes two immediate problems: (1) the irregular shape makes it impractical to comply with side yard, courtyard, and lot coverage regulations, since an as of right building would have to either leave the narrow northwestern corner of the site undeveloped, resulting in a non-complying court or yard, or, if it was developed, it would result in non-usable space that would only increase construction costs without generating revenue from such space; and (2) the sharply angled lot boundaries and pinched interior of the site require the building to have a high "face" to "plate" ratio, which increases construction costs; and

WHEREAS, the Board agrees that the size and the shape of the site are unusual, and that significant constraints are placed on an as of right development; and

WHEREAS, in particular, the Board credits the applicant's explanation of how the size and shape of the site make it impractical to develop the site in a way that complies with lot coverage, and courts and yards; and

WHEREAS, the Board observes that the imposition of these requirements on the site would lead to the creation of impractical floor plates, which would diminish the overall sell out value of the proposed units and, on each floor increase, the amount of space (cores and common areas) that do not generate revenue; and

WHEREAS, the requested lot coverage, yard and court

waivers eliminate the impact that the site's size and shape have on development; and

WHEREAS, however, the Board disagrees that the costs associated with the high "face" to "plate" ratio constitute an unnecessary hardship; instead, the Board concludes that the value of the units, given the multiple exposures arising from the site's shape, and the resulting views, will result in a unit sell out value that will compensate for any increased construction costs that may arise from the shape of the building and "face" to "plate" ratio; and

WHEREAS, the applicant also states that the shape of the site necessitates the additional curb cut and parking waivers; and

WHEREAS, specifically, the applicant notes that the shape and the location of the site make it impossible to place the entire curb cut for the garage entrance anywhere but within 50 feet of the intersection of Canal and Greenwich Streets; and

WHEREAS, the applicant further notes that placement of the curb cut on Canal is infeasible since it is a heavily trafficked street, and the Greenwich Street frontage is too small to accommodate the entire width of the 20 ft. curb cut without locating it within 50 feet of the intersection; and

WHEREAS, the applicant also notes that the small size of the lot makes it impractical to comply with the maximum parking area requirement of 700 sq. ft. while still providing a reasonable layout for three parking spaces (which is an allowed amount in the subject zoning district and which increases the overall viability of the project); thus, the additional 163 sq. ft. is necessary; and

WHEREAS, the opposition argues that the size and the shape of the lot are not unique, in that there are numerous irregularly shaped lots in the immediate vicinity; and

WHEREAS, the applicant responds that the subject site is one of the few in the area that is both irregular in shape and very small in size, and cited to the submitted radius diagram in support of this response; and

WHEREAS, additionally, the applicant also explained that of the 19 other irregular lots (out of the total of 71 lots on Blocks 594 and 595), nine are good candidates for an assemblage, and six are already fully developed; and

WHEREAS, the applicant concludes that irregularity is a characteristic likely to create hardship for only a few vacant or under utilized lots in the area; and

WHEREAS, the Board concurs with this response, and further observes that to meet the finding set forth at ZR § 72-21(a), a site does not have to be the only site in the vicinity that suffers from a particular hardship; and

WHEREAS, instead, the Board must find that the hardship condition cannot be so prevalent that if variances granted to every identically situated lot, the character of the neighborhood would significantly change (see *Douglaston Civic Ass'n, Inc. v. Klein*, 435 N.Y.S.2d 705 (1980)); and

WHEREAS, the Board concludes that while there are other small, irregularly shaped sites in the subject zoning district, the conditions affecting the site are not so prevalent that the uniqueness finding cannot be made; and

WHEREAS, in sum, the Board finds that the requested lot

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coverage, yard, court, curb cut and parking waivers are necessitated by the site's shape and size, and location on Canal Street; and

WHEREAS, when the applicant also proposed FAR, setback and street wall height waivers, evidence was submitted regarding the costs associated with the "E" designation and the location of the site within the flood plain (which leads to soil conditions that would require pile foundation construction); and

WHEREAS, because the FAR waiver request has been withdrawn, these alleged conditions and any costs associated with them are no longer relevant; and

WHEREAS, however, the Board did not find the "E" designation a sufficiently unique condition to warrant consideration as a hardship for which relief was warranted, given that almost all of the sites within the Hudson Square rezoning received such designations; specifically, the Board notes that 56 lots on adjacent and nearby blocks have "E" designations; and

WHEREAS, further, the Board does not view the costs related to the "E" designation (for sound attenuation and soil testing) as an unnecessary hardship, given that they are minimal and because the noise attenuation adds value to the units; and

WHEREAS, the Board also was not persuaded that the site's soil conditions and location within the flood plain was a unique physical hardship; and

WHEREAS, the Board observes that the uniqueness of the site's sub-surface conditions was not conclusively established by the applicant; and

WHEREAS, the Board acknowledges that the "E" designation and the soil conditions (which, as stated above, require that piles be used) add to overall development costs; and

WHEREAS, however, the Board concludes that these additional costs are overcome by the increased sell out value of the units – an increase that results from the waivers that the Board is granting; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions – namely, the site's size and shape, and its location on Canal Street - creates unnecessary hardship and practical difficulty in developing the site in compliance with the current applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed a complying 18,862 sq. ft., 6.02 FAR nine-story building with retail on the ground floor and residential units on the floor above; and

WHEREAS, the study concluded that this complying scenario would not realize a reasonable return, since a complying building would have a compromised and inefficient floor plate that would depress sell out value; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the

neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed height is comparable to two residential projects directly across the Greenwich Street from the site: one is ten stories, and one is 14 stories; and

WHEREAS, the applicant also cites to other sites in the vicinity that are either developed with buildings of comparable height in the process of being developed: an eight-story building proposed for the small block bounded by Canal, Greenwich and Watts Streets, and a nine-story building across Canal Street; and

WHEREAS, finally, the applicant notes that the façade treatment is in keeping with development in the area, and was designed to reduce any appearance of bulk; and

WHEREAS, the Board notes that the current proposal respects the floor area, height and street wall requirements of the subject zoning district; and

WHEREAS, accordingly, in terms of its bulk, the current proposal is much more contextual with the surrounding neighborhood than the original proposal, which required waivers of FAR and street wall; and

WHEREAS, the Board notes that the lot coverage and yard/court waivers will not negatively impact any neighboring building, nor will the resulting building negatively affect the character of the neighborhood; and

WHEREAS, the Board observes that lot coverage is complied with above 60 feet, and the waiver is only needed for the floors beneath this height; and

WHEREAS, finally, the Board notes that after eliminating the FAR and street wall requests, the applicant initially submitted a building proposal which showed a fully compliant height, setback, and dormer; and

WHEREAS, however, concerns were raised as to the dormer above 60 feet, at the street line and adjacent to the lot line along Greenwich Street; and

WHEREAS, accordingly, the current proposal includes a dormer above 60 ft., set back from the street wall; and

WHEREAS, as a result of such configuration and the need to accommodate a sufficient amount of floor area on each floor, the dormer at the 10th and 11th floors modestly encroaches into the setback (approximately 13 sq. ft. at the 10th floor, and approximately 34 sq. ft. at the 11th floor); and

WHEREAS, the Board further notes that the small setback waiver is the result of the desire to enhance light and air for the neighboring property, and that the design change that will incorporate this waiver was in response to certain concerns of the opposition; and

WHEREAS, the Board further notes that the curb cut waiver will not affect traffic patterns in the area, and will eliminate the need for a curb cut on Canal Street, as well as decreasing on street parking demand; and

WHEREAS, the Board observes that while the proposed garage does not comply with the minimum size requirement, the layout has been reviewed and is acceptable; and

WHEREAS, based upon the above, the Board finds that

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this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the pre-existing size, shape and location of the lot; and

WHEREAS, in addition to the complying scenario discussed above, the applicant also analyzed its initial proposal, a 6.02 FAR proposal with lot coverage, street wall height, setback, yard and court waivers, and a 6.02 FAR alternative, with lot coverage and yard/court waivers, but no setback waiver; and

WHEREAS, the applicant concluded that both 6.02 FAR scenarios and the 7.6 FAR scenario would not realize a reasonable return, but that the proposal would; and

WHEREAS, however, the Board expressed concern about the claimed revenue to be generated by the residential units, and suggested that it was understated; and

WHEREAS, in particular, the Board questioned whether the comparables used to generate the sell out value were too low and not an accurate reflection of unit values in the area; and

WHEREAS, further, as noted above, the Board did not view the initial proposal as the minimum variance; and

WHEREAS, after modifying the proposal, the applicant submitted a new feasibility study of the proposal that reflected an updated site value, sell out value, construction costs estimate, and interest rates; and

WHEREAS, the applicant also maximized the value of the as of right FAR and height by removing the proposed cellar, thereby decreasing construction costs and increasing revenue; and

WHEREAS, the applicant notes that the unit prices were based on the pricing structure suggested by the opposition, ranging from \$1,200 per square foot for the smaller units to \$1,950 per square foot for the larger units; previously, the per square foot value was approximately \$1,000; and

WHEREAS, the Board has reviewed this revised study and finds it acceptable, as the sell out value has appropriately increased to reflect actual market conditions; and

WHEREAS, because the applicant modified the proposed building to the current version, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board notes that the opposition has made numerous arguments as to this application, many of which are no longer relevant because of the change in the proposal, particularly the arguments made in opposition to the floor area and height waivers; and

WHEREAS, particularly, concerns about inflated construction costs (i.e. piles) for site conditions that may not be unique are no longer relevant since the FAR waiver request has been withdrawn; further, concerns that the originally proposed FAR and street wall did not comport with the character of the neighborhood are likewise irrelevant; and

WHEREAS, as noted above, the Board agrees that certain of the cited physical conditions were not established as unique,

and were therefore discounted; and

WHEREAS, the Board also notes that the financial data was updated, and that acceptable revenue projections were submitted; and

WHEREAS, however, the opposition continues to oppose the application even as currently proposed, and set forth a summary of its arguments in a submission dated August 15, 2006; and

WHEREAS, for the reasons cited by the applicant in its August 25, 2006 submission, the Board finds that none of the opposition arguments as to the current proposal are persuasive; and

WHEREAS, finally, the Board disagrees with the opposition's contention that the building as proposed should have been presented to the Community Board for another hearing and vote; and

WHEREAS, neither the City Charter nor the Board's Rules mandate that further Community Board action is necessary when a proposed building is reduced in scale; and

WHEREAS, all that is required by the Board's Rules is that the Community Board be copied on submissions made by the applicant to the Board; here, that occurred; and

WHEREAS, while the Rules provide that the Board may send an applicant back to the Community Board at its discretion, the Board has determined that this is unnecessary in this case; and

WHEREAS, the Board observes that the Community Board expressed approval of the lot coverage, curb cut and parking waivers, and only objected to the FAR and significant street wall waiver; as noted above, these waivers have been withdrawn; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA131M dated May 20, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the

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environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an C6-2A zoning district, the proposed construction of an eleven story mixed-use residential, commercial, and community facility building, which does not comply with applicable zoning requirements concerning lot coverage, side yard, setback, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-143, 35-24, and 13-142(a); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received September 12, 2006” –(10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: ten total dwelling units; three parking spaces; a total Floor Area Ratio of 6.5 (20,255 sq. ft.), a residential FAR of 6.019 (18,877.7 sq. ft.), a commercial FAR of 0.307 (962.6 sq. ft.), a community facility FAR of 0.132 (415.0 sq. ft.); a street wall height of 60 ft., and a total height of 120 ft; lot coverage of 96.6%; no side yard or court; a garage area of 862.9 sq. ft.; a curb cut approximately 34 ft. from the intersection of Greenwich and Canal Streets; and setbacks as indicated on the BSA-approved plans;

THAT a construction protection plan approved by the Landmarks Preservation Commission must be submitted to the Department of Buildings before the issuance of any building permit;

THAT all mechanicals and bulkheads shall comply with applicable regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

204-05-BZ

APPLICANT – Harold Weinberg, for Amalia Dweck, owner.
SUBJECT – Application August 26, 2005 – Pursuant to ZR §73-622, Special Permit for an enlargement of a two-family residence which increases the degree of non-compliance for floor area, open space, lot coverage and side yards is contrary to ZR §23-141 and §23-461. The application also proposed

an as-of-right change from a one-family dwelling to a two-family dwelling.

PREMISES AFFECTED – 2211 Avenue T, north side, 57’ east of East 22nd Street, between East 22nd and East 23rd Streets, Block 7301, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 29, 2005 acting on Department of Buildings Application No. 301970400, reads, in pertinent part:

“The proposed enlargement of the existing one-family residence in an R3-2 zoning district:

1. Increases the degree of non-compliance with respect to floor area ratio and is contrary to Sections 23-141 & 54-31 of the Zoning Resolution.
2. Creates non-compliance with respect to the open space and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to lot coverage and is contrary to Section 23-141 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space, and lot coverage, contrary to ZR §§ 23-141 and 54-31; and

WHEREAS, a public hearing was held on this application on June 13, 2006, after due notice by publication in *The City Record*, with continued hearings on July 18, 2006 and August 22, 2006, and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the west side of Avenue T, between East 23rd Street and East 22nd Street; and

WHEREAS, the subject lot has a total lot area of 2,922 sq. ft., and is occupied by a 1,557.9 sq. ft. (0.53 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is

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available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,557.9 sq. ft. (0.53 FAR) to 2,869.2 sq. ft. (0.98 FAR); the maximum floor area permitted is 1,753.2 sq. ft. (0.60 FAR, with attic); and

WHEREAS, the proposed enlargement will increase the lot coverage from 29.4 percent to 42.3 percent (the maximum permitted lot coverage is 35 percent) and reduce the open space from 2,061.2 sq. ft. to 1,237.4 sq. ft. (the minimum required open space is 1,899.3 sq. ft.); and

WHEREAS, the proposed enlargement will reduce one side yard from 14'-8 1/2" to 5'-0" and one side yard from 11'-3" to 8'-0" (side yards totaling 13'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, because the site is within 100 ft. of a corner, no rear yard is required; and

WHEREAS, the enlargement will maintain the non-complying 6'-4" front yard (a minimum front yard of 15'-0" is required); and

WHEREAS, the non-complying 22'-4" perimeter wall height will be reduced to 21'-0" (21'-0" is the maximum permitted perimeter wall height); the proposed enlargement will increase the total height to 35'-0" (35'-0" is the maximum permitted total height); and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, at hearing, the Board asked the applicant to clearly indicate which portions of the existing building were being maintained; and

WHEREAS, the applicant submitted revised drawings highlighting the sections of the foundation and walls to remain; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space, and lot coverage, contrary to ZR §§ 23-141 and 54-31; *on condition* that all

work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 25, 2006"-(8) sheets and "Received September 12, 2006"-(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,869.2 sq. ft., a total FAR of 0.98, a perimeter wall height of 21'-0", and a total height of 35'-0", all as illustrated on the BSA-approved plans;

THAT there shall be no more than 504.6 sq. ft. of floor area in the attic;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets 13-15 of 20, stamped August 25, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

336-05-BZ

CEQR #06-BSA-034M

APPLICANT – Stuart A. Klein, Esq., for Rotunda Realty Corporation, owner; CPM Enterprises, LLC, lessee.

SUBJECT – Application November 23, 2005 – Special permit application under Z.R. §73-36 to permit a Physical Culture Establishment in the subject building, occupying the third and a portion of the second floor. The premise is located in M1-5B zoning district. The proposal is contrary to Z.R. §42-00.

PREMISES AFFECTED – 495 Broadway, a/k/a 66-68 Mercer Street, west side of Broadway between Spring and Broome Streets, Block 484, Lot 24, Borough of Manhattan

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein and Doris Diether, Community Board #2.

ACTION OF THE BOARD – Application granted on condition.

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THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....
0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 17, 2005 acting on Department of Buildings Application No. 104167376, reads, in pertinent part:

“Proposed physical culture or health care establishment is not permitted as-of-right. BSA (special permit) approval required as per ZR 73-36.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M1-5B zoning district, the establishment of a physical culture establishment (“PCE”) to be located on the second and third floors of an existing eight-story commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the conditions set forth below; and

WHEREAS, the site is located on the west side of Broadway between Spring and Broome Streets; and

WHEREAS, the building has a total floor area of 77,066 sq. ft.; and

WHEREAS, the PCE will occupy approximately 9,269 sq. ft. of floor area, with 7,154.7 sq. ft. on the second floor and 2,126 sq. ft. on the third floor; and

WHEREAS, the applicant represents that the PCE will offer facilities for physical improvement, including golf skills, free weight, circuit, and cardiovascular training and aerobics; and

WHEREAS, the applicant submitted a sound attenuation analysis detailing measures to minimize the effects of sound and vibration and ensure code compliance; and

WHEREAS, the proposed hours of operation for the PCE are as follows: Monday through Thursday, 5:30 a.m. to 10:30 p.m.; Friday, 5:30 a.m. to 9:00 p.m.; Saturday, 8:00 a.m. to 8:00 p.m.; and Sunday, 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the Board notes that the site is within the SoHo-Cast Iron Historic District and that the applicant has obtained a Certificate of No Effect from the Landmarks Preservation Commission; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent

properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA034M, dated November 26, 2005; and

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within an M1-5B zoning district, the establishment of a PCE to be located on the second and third floors of an existing eight-story commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 24, 2006”-(2) sheets and “Received July 13, 2006”-(1) sheet; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on September 12, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to

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Monday through Thursday, 5:30 a.m. to 10:30 p.m.; Friday, 5:30 a.m. to 9:00 p.m.; Saturday, 8:00 a.m. to 8:00 p.m.; and Sunday, 8:00 a.m. to 6:00 p.m.;

THAT the above conditions shall appear on the certificate of occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all signage shall comply with regulations applicable in M1-5B zoning districts within the SoHo Cast Iron Historic District;

THAT all fire protection measures, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

10-06-BZ

APPLICANT – Harold Weinberg, for David Cohen, owner.
SUBJECT – Application January 12, 2006 – Pursuant to ZR 73-622 Special Permit for the enlargement of a single family residence which increase the degree of non-compliance for lot coverage and side yards (23-141 & 23-48), exceeds the maximum permitted floor area (23-141) and proposes less than the minimum rear yard (23-47). The premise is located in an R4 zoning district.

PREMISES AFFECTED – 2251 East 12th Street, east side 410' south of Avenue V between Avenue V and Gravesend Neck Road, Block 7372, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 14, 2006 acting on Department of Buildings Application No. 302057002, reads, in pertinent part:

“The proposed enlargement of the existing detached residence in an R4 zoning district:

1. Creates a new non-compliance with respect to floor area ratio exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Reduces the rear yard below the 30' minimum required and is contrary to Section 23-47 ZR.
3. Extends the degree of non-compliance with respect to lot coverage ratio and lot coverage and is contrary to Sections 23-141 and 54-31 ZR.
4. Extends the degree of non-compliance with respect to side yards and is contrary to Sections 23-48 and 54-31 ZR.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-47, 23-48, and 54-31; and

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in *The City Record*, with a continued hearing on August 22, 2006, and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the east side of East 12th Street, between Avenue V and Gravesend Neck Road; and

WHEREAS, the subject lot has a total lot area of 2,400 sq. ft., and is occupied by a 1,305.7 sq. ft. (0.54 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,305.7 sq. ft. (0.54 FAR) to 2,863.5 sq. ft. (1.19 FAR); the maximum floor area permitted is 2,160 sq. ft. (0.90 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 40 percent to 46.2 percent (the maximum permitted lot coverage is 45 percent) and reduce the open space from 1,438.6 sq. ft. to 1,291.6 sq. ft. (the minimum required open space is 1,320 sq. ft.); and

WHEREAS, the proposed enlargement will reduce both side yards from 5'-0" each to 3'-11" each (side yards totaling 13'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, the proposed enlargement will maintain the complying 20'-0" front yard (a minimum front yard of 10'-0" is required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 27'-7" to 20'-0" (the minimum rear yard required is 30'-0"); and

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WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, both the proposed perimeter wall height of 25'-0" and the total height of 35'-0" will comply with district regulations; and

WHEREAS, at hearing the Board asked the applicant to establish a context for the proposed 1.19 FAR; and

WHEREAS, the applicant submitted information on the bulk parameters of other homes on East 12th Street, which were comparable to the proposed enlarged home; and

WHEREAS, additionally, the applicant submitted photographs of homes in the vicinity, which were comparable in size; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, the Board also notes that the lot area is relatively small and that the FAR request is reasonable, given its size; and

WHEREAS, additionally, the Board asked the applicant to remove the front porch from the plans; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board also asked the applicant to clearly indicate which portions of the existing building were being maintained; and

WHEREAS, the applicant represents that all side walls will be retained; and

WHEREAS, the applicant submitted revised drawings highlighting which sections of the foundation, walls, and floors would remain; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, rear and side yards, contrary to ZR §§ 23-141, 23-47, 23-48, and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 28, 2006" and "Received August 25, 2006"–(5) sheets; and *on further*

condition:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,863.5 sq. ft., a total FAR of 1.19, a perimeter wall height of 25'-0", and a total height of 35'-0", all as illustrated on the BSA-approved plans;

THAT there shall be no more than 646.67 sq. ft. of floor area in the attic;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets 9-13 of 18, stamped August 25, 2006 and Sheet 17A, stamped June 28, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT the front porch shall be as approved by DOB;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

37-06-BZ

CEQR #06-BSA-059M

APPLICANT – Leo Weinberger, Esq., for 180 Lafayette Corporation, owner, Skin Care 180, Incorporated, lessee.

SUBJECT – Application March 2, 2006 – Under Z.R. §73-36 to allow the proposed PCE (Jasmine Spa) on the first floor and cellar level in an existing seven-story building. The premise is located in a M1-5B zoning district.

PREMISES AFFECTED – 180 Lafayette Street, east side of Lafayette Street between Grand and Broome Streets, Block 473, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Doris Diether, Community Board #2M.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

THE RESOLUTION:

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WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 2, 2006, acting on Department of Buildings Application No. 104119589, reads, in pertinent part:

- “1. Proposed physical culture or health care establishment is not permitted as-of-right in M1-5B District per ZR 42-10.
2. Proposed physical culture or health establishment is not permitted as of right in a building in M1-5B District as per ZR 42-14.D.(3).
3. Proposed physical culture or health establishment is not permitted below the floor of second story in a building in M1-5B District as per ZR 42-14.D.(2).(b).”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M1-5B zoning district, the establishment of a physical culture establishment (“PCE”) to be located on the first floor and cellar level of an existing seven-story mixed-use commercial and residential building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 15, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the conditions set forth below; and

WHEREAS, the site is located on the west side of Lafayette Street between Broome and Grand Streets; and

WHEREAS, the building has a total floor area of 15,127 sq. ft.; and

WHEREAS, the PCE will occupy 1,160.94 sq. ft. on the cellar level and 1,751.36 sq. ft. on the first floor of the seven-story building; and

WHEREAS, the certificate of occupancy for the building, indicating that commercial use is permitted on the first floor and cellar level, was submitted into the record; and

WHEREAS, the applicant notes that the building is subject to two prior Board grants, (BSA Cal. Nos. 126-63-A and 133-91-A), which both address egress; and

WHEREAS, the applicant represents that the PCE will offer massages; facials and other beauty treatments; and classes on nutrition, stress management, and wellness; and

WHEREAS, the applicant proposes to operate the facility under the name Jasmine Spa; and

WHEREAS, the proposed hours of operation for the PCE are as follows: seven days a week, from 10 a.m. to 7 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06-BSA-059M, dated March 2, 2006; and

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within an M1-5B zoning district, the establishment of a PCE to be located on the first floor and cellar level of an existing seven-story mixed-use commercial and residential building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 14, 2006”–(3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on September 12, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to seven days a week, from 10 a.m. to 7 p.m.;

THAT all massages shall be performed only by New

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York State licensed massage professionals;

THAT the above conditions shall appear on the certificate of occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all signage shall comply with regulations applicable in M1-5B zoning districts;

THAT all fire protection measures, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

290-04-BZ

APPLICANT – Stuart A. Klein, Esq., for Alex Lokshin – Carroll Gardens, LLC, owner.

SUBJECT – Application August 20, 2004 – under Z.R. §72-21 to permit, in an R4 zoning district, the conversion of an existing one-story warehouse building into a six-story and penthouse mixed-use residential/commercial building, which is contrary to Z.R. §§22-00, 23-141(b), 23-631(b), 23-222, 25-23, 23-45, and 23-462(a).

PREMISES AFFECTED – 341-349 Troy Avenue (a/k/a 1515 Carroll Street), Northeast corner of intersection of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Joseph Scott.

ACTION OF THE BOARD – Laid over to October 31, 2006, at 1:30 P.M., for continued hearing.

328-04-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application October 5, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a six story residential building, with twelve dwelling units, Use Group 2, located in an M1-1 zoning district, does not comply with zoning requirements for use, bulk and parking provisions, is contrary to Z.R. §42-00, §43-00 and §44-00.

PREMISES AFFECTED – 110 Franklin Avenue, between Park and Myrtle Avenues, Block 1898, Lots 49 and 50,

Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Chris Wright and Robert Pauls.

For Opposition: D. B.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

33-05-BZ

APPLICANT– Sheldon Lobel, P.C., for Yeshiva Tiferes Yisroel, owner.

SUBJECT – Application February 24, 2005 – Variance pursuant to Z.R. 72-21 to permit the construction of a non-complying school (Yeshiva Tiferes Yisrael). The proposed Yeshiva will be constructed on lots 74, 76, 77, 78 and 79 and will be integrated with the existing Yeshiva facing East 35th Street which was approved in a prior BSA grant on lots 11, 13, 15, and 16. The existing and proposed Yeshiva and their associated lots will be treated as one zoning lot. The subject zoning lot is located in an R5 zoning district. The requested waivers and the associated Z.R. sections are as follows: Floor Area Ratio and Lot Coverage (24-11); Side Yard (24-35); Rear Yard (24-36); Sky Exposure Plane (24-521); and Front Wall Height (24-551).

PREMISES AFFECTED – 1126/30/32/36/40 East 36th Street, west side of East 36th Street, between Avenues K and L, Block 7635, Lots 74, 76, 77, 78, 79, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most, Rabbi Jacobson, Dear Turk and L. Goldenberg.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

47-05-BZ

APPLICANT – Cozin O'Connor, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 – under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M., for deferred decision.

199-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Stefano Troia, owner.

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SUBJECT – Application August 23, 2005 – under Z.R. §72-21 to allow a proposed twelve (12) story residential building with ground floor retail containing eleven (11) dwelling units in an M1-6 Zoning District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 99 Seventh Avenue, located on the southeast corner of 7th Avenue and West 27th Street (Block 802, Lot 77), Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Joseph Morsellino.

For Opposition: Jack Lester.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

298-05-BZ

APPLICANT – Rampulla Associates Architects, for Pasquale Pappalardo, owner.

SUBJECT – Application October 4, 2005 – Variance pursuant to Z.R. Section 72-21 to construct a new two-story office building (Use Group 6) with accessory parking for 39 cars. The premises is located in an R3X zoning district. The site is currently vacant and contains an abandoned greenhouse building from when the site was used as a garden center. The proposal is contrary to the district use regulations pursuant to Z.R. Section 22-00.

PREMISES AFFECTED – 1390 Richmond Avenue, bound by Richmond Avenue, Lamberts Lane and Globe Avenue, Block 1612, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla and Pat Pappalardo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 1:30 P.M., for decision, hearing closed.

363-05-BZ

APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.

SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. sections 23-141, 23-45(a), 23-462(a), 23-861, and 25-23.

PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Hirshman and Amy Klet.

For Opposition: Ram M. Suctdev.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.

SUBJECT – Application December 22, 2005 – Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to Z.R. §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik and Robert Pauls.

For Opposition: MaryAnn McGowan.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for continued hearing.

54-06-BZ

APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.

SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. §72-21 to permit the development of a three-story & cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family dwellings which would be demolished as part of the proposal. The proposal seeks to vary ZR Sections 113-51 (Floor Area); 113-55 & 23-631 (Perimeter Wall Height, Total Height & Sky Exposure Plane); 113-542 & 23-45 (Front Yard & Setback); 113-543 & 23-461(a) (Side Yard); 113-544 (Rear Yard); 113-561 & 23-51 (Parking); and 113-22 (Loading Berth).

PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik, David Shteierman, Rabbi Goodfreund

For Opposition: Stuart Klein, Marin Pope, Michael Gregorio, Morton Pupko, Pinny Sofier, Traci Schanke, Philip G. Kee, Chana Martel, Alfred Langner, Rachel Foanco, Nancy Kee and others.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M., for continued hearing.

55-06-BZ

APPLICANT – Rampulla Associates Architects, for Nadine

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Street, LLC, owner.

SUBJECT – Application March 24, 2006 – Zoning variance pursuant to ZR Section 72-21 to allow a proposed office building in an R3-2/C1-1 (NA-1) district to violate applicable rear yard regulations; contrary to ZR Sections 33-26 and 33-23. Special Permit is also proposed pursuant to ZR Section 73-44 to allow reduction in required accessory parking spaces.

PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot (Tentative 92, 93, 94), Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla.

ACTION OF THE BOARD – Laid over to October 31, 2006, at 1:30 P.M., for continued hearing.

104-06-BZ

APPLICANT– Eric Palatnik, P.C., for Martin Menashe, owner.

SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to partially legalize and partially alter a long standing enlargement to an existing single family residence which is contrary to ZR 23-141 for floor area and open space and ZR 23-46 for side yard requirement. The premise is located in an R-2 zoning district. This current application filing has a previous BSA Ca. #802-87-BZ.

PREMISES AFFECTED – 3584 Bedford Avenue, north of Avenue “O”, Block 7678, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

106-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Mendel Bobker, owner.

SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to allow the enlargement of a two-family residence which exceeds the allowable floor area ratio per ZR 23-141, side yards less than the minimum per ZR 23-461 and proposes a rear yard less than the minimum required per ZR 23-47. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1436 East 28th Street, west side of East 28th Street, 280 between Avenue N and Kings Highway, Block 7681, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Robert Puleo, Frank Puleo and other.

ACTION OF THE BOARD – Laid over to October 24, 2006, at 1:30 P.M., for continued hearing.

113-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Columbia University in the City of New York, lessee.

SUBJECT – Application June 6, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed 13-story academic building to be constructed on an existing university campus (Columbia University). The project requires lot coverage and height and setback waivers and is contrary to Z.R. Sections 24-11 and 24-522.

PREMISES AFFECTED – 3030 Broadway, Broadway, Amsterdam Avenue, West 116th and West 120th Streets, Block 1973, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: James Power.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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SPECIAL MEETING

WEDNESDAY AFTERNOON, SEPTEMBER 13, 2006

1:00 P.M.

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Chin and Commissioner Collins.

174-05-A

APPLICANT – Norman Siegel on behalf of Neighbors
Against N.O.I.S.E., GVA Williams for (Hudson Telegraph
Associates, LP) owner; Multiple lessees.

SUBJECT – Application July 29, 2005 – Neighbors against
N.O.I.S.E. is appealing the New York City Department of
Buildings approval of a conditional variance of the New York
City Administrative Code §27-829(b)(1) requirements for
fuel oil storage at 60 Hudson Street.

PREMISES AFFECTED – 60 Hudson Street, between Worth
and Thomas Streets, Block 144, Lot 40, Borough of
Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Norman Siegel, Council Member Alan J.
Gerson, Peter Gleason, Metria Collin, Robert Gottheim, Bess
Matassa, Tim Lannan, Madelyn Wils; Diane Stein, Alan
Sash, Hal Bromm, Deborah Allen, Catherine Skopic and
Chris D.

For Opposition: Phylis Arnold, Department of Buildings and
James H. Farley.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and
Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October
17, 2006, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

BULLETIN

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September 28, 2006

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

SATISH BABBAR, *Vice-Chair*

CHRISTOPHER COLLINS

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Tuesday, September 19, 2006**

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131-93-BZ	3743-3761 Nostrand Avenue, Brooklyn
133-94-BZ	166-11 Northern Boulevard, Queens
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228-96-BZ	1209 Zerega Avenue, Bronx
161-05-A	7194, 7196 Amboy Road and 26 Joline Avenue, Staten Island
364-05-A & 365-05-A	87-30 and 87-32 167 th Street, Queens
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113-06-BZ	3030 Broadway, Manhattan
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290-05-BZ	1824 53 rd Street, Brooklyn
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56-06-BZ	1060 East 24 th Street, Brooklyn

DOCKETS

New Case Filed Up to September 19, 2006

240-06-BZ

147-04 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 37, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

241-06-BZ

147-06 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 36, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

242-06-BZ

147-08 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 35, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

243-06-BZ

147-10 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 34, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

244-06-BZ

147-12 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 33, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings.

245-06-BZ

147-14 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 32, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

246-06-BZ

147-20 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 31, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

247-06-BZ

147-22 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 30, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

248-06-BZ

147-24 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 29, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

249-06-BZ

147-26 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 28, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

DOCKET

250-06-BZ

147-28 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 27, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

251-06-BZ

147-30 Union Turnpike, South side of Union Turnpike 515.96 feet from the corner formed by the intersection of 150th Street and Union Turnpike and 507.55 feet from corner formed by the intersection of Main Street and Union Turnpike, Block 6715, Lot 26, Borough of **Queens, Community Board: 8**. Under 72-21-Proposed conversion of community facility (dormitory) to use of (12) twelve abutting three-unit residential buildings

252-06-BZ

55 East 175th Street, Located on 175th Street between Townsend Avenue and Walton Avenue., Block 2850, Lot 38, Borough of **Bronx, Community Board: 5**. Under 72-21-To allow construction of a community center.

253-06-BZ

2243 Homecrest Avenue, East side of Homecrest Avenue between Avenue V and Gravesend Neck Road., Block 7373, Lot 70, Borough of **Brooklyn, Community Board: 15**. (SPECIAL PERMIT)-73-622-To allow the enlargement of a residence.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

OCTOBER 31, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 31, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

69-95-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Hudson River Park Trust, owner; Chelsea Piers Management Inc., lessee.

SUBJECT –Application August 31, 2006 - Extension of Term/Amendment/Waiver - Application filed on behalf of the Sports Center at Chelsea Piers to Extend the term of the Special Permit which was granted pursuant to section 73-36 of the zoning resolution to allow the operation of a Physical Cultural Establishment in a M2-3 zoning district and expired on August 8, 2005. The application seeks to amend the resolution to reflect the elimination of the Health Club in the North head house of the Chelsea Piers Sport and Entertainment Complex.

PREMISES AFFECTED – Pier 60, 111B Eleventh Avenue, west side of West Street, between West 19th and West 20th Streets, Block 662, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #4M

363-04-BZ

APPLICANT – Mark A. Levine, Esq., for 6002 Fort Hamilton Parkway Partners, owners.

SUBJECT – Application June 27, 2006 – Amendment to reconfigure internal layout and minor changes to the structural façade. The premise is located in an M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, a/k/a 949-959 61st Street, a/k/a 940-966 60th Street, south of 61st Street, east of Fort Hamilton Parkway, Block 5715, Lots 21 & 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEALS CALENDAR

84-06-BZY

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman,owner.

SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR 11-331 for a four story mixed use building. Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.

PREMISES AFFECTED –1472 East 19th Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

OCTOBER 31, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 31, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

67-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.

SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. 72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of ZR 22-00 and 36-21.The proposed number of parking spaces pursuant to a waiver of ZR 36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.

COMMUNITY BOARD #2SI

128-06-BZ

APPLICANT– Juan D. Reyes III, Esq., for Atlantic Walk, LLC, owner.

SUBJECT – Application June 16, Zoning variance pursuant to ZR § 72-21 to allow a nine-story residential building in an M1-5 district (Area B-2 of Special Tribeca

CALENDAR

Mixed Use District). Twenty Six (26) dwelling units and twenty six (26) parking spaces are proposed. The development would be contrary to use (Z.R. §111-104(d) and 42-10), height and setback (Z.R. § 43-43), and floor area ratio regulations (Z.R. §111-104(d) and 43-12). The number of parking spaces exceeds the maximum allowed is contrary to Z.R. § 13-12.

PREMISES AFFECTED – 415 Washington Street, west side of Washington Street, corner formed by Vestry Street and Washington Street, Block 218, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

159-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Shalom Kalnicki, owner.

SUBJECT – Application July 18, 2006 - Pursuant to ZR 72-21 for a variance to construct a single family home on a vacant lot which does not comply with the minimum lot width ZR 23-32 and less than the total required side yard, ZR 23-461. The premise is located in an R1-1 zoning district.

PREMISES AFFECTED – 4540 Palisade Avenue, east side of Palisade Avenue, 573' from 246th Street, Block 5923, Lot 231, Borough of The Bronx.

COMMUNITY BOARD #8BX

226-06-BZ

APPLICANT– Eric Palatnik, P.C., for Bracha Weinstock, owner.

SUBJECT – Application September 5, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family semi-detached residence. This application seeks to vary ZR 23-141(a) for open space and floor area; ZR 23-461(b) for less than the minimum side yard of 8 feet; ZR 23-47 for less than the minimum rear yard and ZR 23-631 for perimeter wall height. The premise is located in an R3-2(HS) zoning district.

PREMISES AFFECTED – 1766 East 28th Street, between Avenue R and Quentin Road, Block 6810, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

234-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Martin Gross and Batsheva Gross, owners.

SUBJECT – Application September 11, 2006 – Pursuant to ZR 73-622 for the enlargement of single family residence. This application seeks to vary ZR 23-141(a) for open space and floor area, ZR 23-47 for less than the minimum rear yard and ZR 23-461 for less than the minimum side yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1085 East 22nd Street, east side, between Avenue J and K, Block 7604, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #14BK

235-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Susan Rosenberg, owner.

SUBJECT – Application September 11, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family residence. This application seeks to vary ZR 23-141 for open space and floor area and ZR 23-47 for less than the minimum rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 3155 Bedford Avenue, east side of Bedford Avenue, between Avenue J and Avenue K, Block 7607, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, SEPTEMBER 19, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, July 11, 2006 as printed in the bulletin of July 20, 2006, Vol. 91, Nos. 27 & 28. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

149-01-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for Jane Street Realty, LLC, owner.

SUBJECT – Application June 19, 2006 – This application is to Reopen and Extend the Time to Complete Construction for the inclusion of the first and cellar floor areas of an existing six-story building for residential use and to obtain a Certificate of Occupancy which expired on June 18, 2006. The premise is located in an R6 zoning district.

PREMISES AFFECTED – 88-90 Jane Street, North side of West 12th Street, between Washington Street and Greenwich Street, Block 641, Lot 1001-1006, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik and Doris Diether, Community Board #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment for an extension of time to complete construction and obtain a certificate of occupancy for the conversion of community facility space to six residential dwelling units and a recreation space within an existing six-story residential building; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City Record*, and then to decision on September 19, 2006; and

WHEREAS, on June 18, 2002 under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit in an R6 zoning district the conversion of community facility space on the cellar level and first floor of an existing six-story building to additional residential dwelling units and recreation space; and

WHEREAS, one of the conditions of the grant was that construction be completed and a new certificate of occupancy be

obtained by June 18, 2006; and

WHEREAS, the applicant represents that construction has been delayed as a result of construction-related and financing issues; and

WHEREAS, however, the applicant represents that construction is near completion and should be finished in September 2006; and

WHEREAS, the applicant submitted photographs of the site which illustrate that a significant amount of work has been completed; and

WHEREAS, the applicant requests additional time to obtain the certificate of occupancy; and

WHEREAS, additionally, at the time of the original grant, the applicant volunteered to restrict, for a term of ten years, the occupancy of one subsidized unit to a qualified senior citizen at a subsidized rate; and

WHEREAS, further, the applicant agreed to provide documentation of the housing terms and occupancy prior to obtaining a certificate of occupancy; and

WHEREAS, the Community Board has requested documentation that these terms will be met; and

WHEREAS, at hearing, the Board asked the applicant to identify which unit would be subsidized and to provide documentation of the agreed-upon parameters; and

WHEREAS, the applicant submitted into the record a statement which identifies the subsidized unit (on the first floor) to be occupied only by a qualifying senior citizen for a ten-year term (starting from the issuance of the certificate of occupancy); and

WHEREAS, accordingly, the Board finds that it is appropriate to grant an extension of time to obtain a certificate of occupancy; and

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, said resolution having been adopted on June 18, 2002, so that as amended this portion of the resolution shall read: “to permit a one year extension of time to obtain a certificate of occupancy, *on condition*:

THAT a new certificate of occupancy shall be obtained by September 19, 2007, one year from the date of this grant;

THAT the conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

(DOB Application No. 102849777)

Adopted by the Board of Standards and Appeals, September 19, 2006.

167-55-BZ

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APPLICANT – Vassalotti Associates Architects, for Gargano Family Partnership, owner; Joseph Brienza, lessee.

SUBJECT – Application April 25, 2006 – Pursuant to ZR§11-411 and ZR §11-412 to Reopen and Extend the Term of Variance/Waiver for a Gasoline Service Station (Gulf Station), with minor auto repairs which expired on October 7, 2005 and for an Amendment to permit the sale of used cars. The premise is located in R3-1 zoning district.

PREMISES AFFECTED – 20-65 Clintonville Street, north corner of the intersection of Clintonville Street and Willets Point Boulevard, Block 4752, Lot 1, Borough of Queens

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

131-93-BZ

APPLICANT – Eric Palatnik, P.C., for Al & Selwyn, Inc., owner.

SUBJECT – Application April 10, 2006 – Extension of Term/Amendment - pursuant to Z.R. §§11-411 & 11-412 to extend the term of an automotive service station which expired on November 22, 2004. The application seeks an amendment of the previous BSA resolution so as to authorize the enlargement of the existing one story masonry building to include two additional service bays and to expand the auto sales use to accommodate the display of twenty motor vehicles an increase from the previously approved five motor vehicles. The subject premises is located in a C2-2/R5 zoning district.

PREMISES AFFECTED – 3743-3761 Nostrand Avenue, north of the intersection of Avenue “Y”, Block 7422, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for continued hearing.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough

of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for continued hearing.

171-95-BZ

APPLICANT – Law Office of Howard Goldman, LLC, for The Chapin School Limited, owner.

SUBJECT – Application July 21, 2006 – Pursuant to Z.R. §72-01 and §72-22 for an amendment to a not-for-profit all girls school (The Chapin School) for a three floor enlargement which increases the floor area and the height of the building. The premise is located in an R8B/R10A zoning district.

PREMISES AFFECTED – 100 East End Avenue, between 84th and 85th Streets, Block 1581, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Patricia Hayot, Howard Goldman and Larry Marner.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

228-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Five D’s Irrevocable Trust, owner.

SUBJECT – Application July 15, 2006 – Extension of Term of a previously granted special permit under section 73-44 of the zoning resolution which permitted the reduction, from 40 to 25 in the number of required accessory off-street parking spaces for a New York vocational and educational counseling facility for individuals with disabilities (Use Group 6, Parking Requirement Category B1) located in an M1-1 zoning district.

PREMISES AFFECTED – 1209 Zerega Avenue, west side of Zerega Avenue between Ellis Avenue and Gleason Avenue, Block 3830, Lot 44, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

MINUTES

161-05-A

APPLICANT – Tottenville Civic Association, for Willow Avenue Realty, Inc., owner.

SUBJECT – Application July 15, 2005 – Appeal challenging a Department of Buildings determination, dated June 12, 2005, that the subject premises is comprised of two separate zoning lots based on DOB's interpretation of the definition of ZR 12-10" zoning lot"(c) & (e) and therefore could be developed as individual lots.

PREMISES AFFECTED – 7194, 7196 Amboy Road and 26 Joline Avenue, Block 7853, Lots 47, 74, Richmond, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Acting Staten Island Borough Commissioner, dated June 14, 2005 (the "2005 Final Determination") and a subsequent final determination of the Staten Island Borough Commissioner, dated May 24, 2006 (the "2006 Final Determination"); and

WHEREAS, the 2005 Final Determination was issued in response to a May 12, 2005 letter from the appellant (the Tottenville Civic Association, a not for profit entity), challenging a decision of the Department of Buildings ("DOB") to issue New Building permits for construction of two three-story, two-family residential buildings (the "Buildings") on a zoning lot comprised of two separate tax lots (Lot 47, which corresponds to 7194 Amboy Road, and Lot 74, which corresponds to 7196 Amboy Road); and

WHEREAS, Lot 72 corresponds to 26 Joline Avenue, and is currently in separate ownership from the other two lots; and

WHEREAS, the two contested permits were issued under DOB Application Nos. 500573300 (for the home on Lot 47) and 500573319 (for the home on Lot 74); and

WHEREAS, as reflected in the 2005 Final Determination, the Acting Staten Island Borough Commissioner denied this request because DOB was satisfied that there was no basis to revoke the permits; and

WHEREAS, specifically, the 2005 Final Determination reads, in pertinent part:

"In response to your request for a final determination regarding the above listed applications I am reiterating the Department's position previously forward to you by the Deputy General Counsel Felicia R. Miller. This addresses the issues raised in your correspondence dated October 12, 2004 wherein you question whether dual ownership of Lots 47 and 72 was established prior to issuing the permit on April 21, 2004.

This is to confirm that JTD Land Services Inc. certified to the Department on April 14, 2004 that these lots were in separate ownership (Exhibit I was filed for each lot). In addition, new metes and bounds descriptions of the zoning lot formed by Lot 47 and the zoning lot formed by Lot 72 were executed and recorded at this time by the respective owners, in the form of Exhibit III.

You further asked for clarification as to why the merged zoning lot dissolved when the permit was revoked, whereas other zoning lots were not dissolved when permits were revoked. This is not true. A zoning lot must be formed and declared at the time a building permit is issued. Where a zoning lot relies on paragraph (c) of the zoning lot definition set forth in the Zoning Resolution of the City of New York, the lots must be in single ownership at the time a valid permit is issued. NO zoning lot is formed if a valid permit was not issued. If, however, the zoning lot is formed based on its status as of December 15, 1961, this is not affected by a permit revocation. Nonetheless, at the time the new permit is to be issued, the metes and bounds of the zoning lot must be recorded. As stated above, the Exhibit III documents dated April 14, 2004 satisfied this requirement.

Prior to the Department's issuance of permits on April 21, 2004, the title company also certified, pursuant paragraph (c) of the zoning lot definition, that each lot was in single ownership and each part-in-interest is a party in interest as defined in paragraph (e) of the zoning lot definition. Therefore, regardless of whether the lots existed as tracts of land on December 15, 1961, the lots could be accepted as individual zoning lots in connection with the issuance of permits for the separate development of the lots.

While an Exhibit V was also filed that purported to waive the rights of the non-fee owner party-in-interest, this document did not serve any meaningful purpose, as a waiver is only relevant where a zoning lot is formed by a declaration pursuant to paragraph (d) of the zoning lot definition. As mentioned above, the zoning lots at issue here were formed either pursuant to paragraph (a) or (c), no pursuant to paragraph (d)."; and

WHEREAS, a public hearing was held on this application on July 18, 2006 after due notice by publication in *The City Record*, with continued hearing on August 22, 2006, and then to decision on September 19, 2006; and

WHEREAS, the three lots are located in an R3A zoning district, within the Special South Richmond District (the "SSRD"); and

WHEREAS, Lot 72 has frontage only on Joline Avenue (a non-arterial street), and Lot 47 has frontage only on Amboy Road (an arterial road); Lot 74 is at the rear of Lot 47; and

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WHEREAS, the three referenced lots are contiguous to each other, and on November 19, 2003, they were in single ownership; and

WHEREAS, the owner of the three lots sought to merge them into a single zoning lot, in anticipation of future development; and

WHEREAS, this purported merger was initially accepted by DOB, based upon submitted merger documentation and building permit applications for the Buildings (as noted above, Application Nos. 500573300 and 500573319); building permits under these application numbers were subsequently issued (the "Original Permits") on November 19, 2003; and

WHEREAS, however, on December 2, 2003, a DOB audit of the Original Permits revealed that the applications proposed a curb cut along an arterial street (Amboy Road) on a proposed zoning lot that had access to a non-arterial street (Joline Avenue), contrary to ZR § 107-251(a) (a special regulation applicable in the SSRD, discussed in greater detail below); and

WHEREAS, thus, on December 3, 2003, DOB issued a ten-day notice of its intent to revoke the Original Permits, as well as a stop work order, citing, among other items, concerns that (1) the permit applicant had not received approval from the City Planning Commission (CPC) for the proposed curb cuts; and (2) one of the Buildings did not front directly upon a street and therefore requires Fire Department approval pursuant to Building Code § 27-291; and

WHEREAS, as discussed further below, since the Original Permits were deemed to be invalid when issued, DOB contends that the purported zoning lot merger was invalid as well; and

WHEREAS, subsequently, amended applications were made to reinstate the Original Permits; and

WHEREAS, instead of a merger of all three lots, a merger of only Lots 47 and 74 was proposed; Lot 72 maintained as a separate zoning lot to avoid the violations of law revealed in the prior DOB audit; and

WHEREAS, during the review of the amended applications, DOB resolved the concerns reflected in the December 3, 2003 notice as well as other issues that arose, and eventually approved the applications; and

WHEREAS, thus, on April 2, 2004, DOB re-issued the permits for development on the zoning lot formed by the merger of Lots 47 and 72 (hereinafter, the "Revised Permits"); and

WHEREAS, in its initial submission to the Board, the appellant challenged the 2005 Final Determination based upon the following arguments: (1) CPC did not approve the subdivision of the zoning lot comprised of all of the three lots, purportedly formed as November 19, 2003, as required pursuant to ZR § 107-08, which provides in part, "Any subdivision that is proposed to take place within the Special District after September 11, 1975 shall be filed with the City Planning Commission, and the City Planning Commission shall certify that such subdivision complies with the approved South Richmond Plan"; and (2) because the

subdivision was improper, there is still no compliance with ZR § 107-251(a), which, as noted above, provides in part "Curb cuts are not permitted along an *arterial street* on *zoning lots* with access to a *non-arterial street*"; and

WHEREAS, as to the first argument, the appellant argues that the application to merge Lots 47, 74, and 72 on November 19, 2003 was in fact successful and must be credited by DOB because the lots were in common ownership at the time the application was made; and

WHEREAS, in support of this argument, the appellant cites to another provision of ZR § 107-251(a), which states that within the SSRD "adjoining zoning lots in the same ownership shall be treated as one zoning lot"; and

WHEREAS, as noted above, DOB disputes appellant's claims that the three lots were merged on November 19, 2003; and

WHEREAS, DOB notes that the Original Permits relied on the creation of a single zoning lot out of a tract of land owned by a single fee owner, pursuant to ZR § 12-10(c) "Zoning Lot"; and

WHEREAS, ZR § 12-10(c) provides that a zoning lot is a "tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single block, which at the time of filing for a building permit... is under single fee ownership and with respect to which each party having any interest therein is a party in interest."; and

WHEREAS, according to a certification from JTD Land Services Inc. as agent for Fidelity Title Insurance Company of New York dated May 23, 2003, Maria LaMarch was the single fee owner of Lots 47, 74, and 72 as of that date; and

WHEREAS, however, DOB asserts that a zoning lot can only be formed under paragraph (c) of the zoning lot definition set forth at ZR § 12-10 if based upon valid permits; and

WHEREAS, DOB contends that although the owner obtained the Original Permits on November 19, 2003, they were later found to be defective; and

WHEREAS, specifically, as noted above, the audit revealed a violation of the provision within ZR § 107-251(a) that provides in part that "Curb cuts are not permitted along an *arterial street* on *zoning lots* with access to a *non-arterial street*"; and

WHEREAS, DOB states that in light of the noted violation, the site could not be developed as a single zoning lot without contravening the ZR; therefore, the Original Permits were invalid; and

WHEREAS, DOB further notes that the appellant does not dispute that the Original Permits were issued in error; and

WHEREAS, the Board agrees with DOB: because the Original Permits were invalid when issued, the merger of the three lots was never lawfully effected; and

WHEREAS, thus, CPC did not need to approve a subdivision pursuant to ZR § 107-08; and

WHEREAS, as to the second argument, the appellant contends there are still curb cuts along an arterial street on a

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zoning lot having access to a non-arterial street in violation of ZR § 107-251(a); and

WHEREAS, DOB notes that that the appellant mistakenly believes that the three lots were still in the same ownership at the time the Revised Permits were issued, and again erroneously argues that the three lots must be treated as a single zoning lot for purposes of applying ZR § 107-251(a); and

WHEREAS, DOB represents that the three lots were no longer in same ownership as of April 2, 2004, prior to the issuance of the Revised Permits; and

WHEREAS, in support of this representation, DOB relies upon a title report prepared by Direct Land Services Corp., dated September 8, 2004, showing that Willow Avenue Realty Inc. owned Lots 47 and 74 as of April 2, 2004 and that Maria LaMarch owned Lot 72 as of March 23, 2001; and

WHEREAS, thus, DOB concludes that there is no violation of ZR § 107-251(a); and

WHEREAS, specifically, DOB notes that Lots 47 and 74 have access only to Amboy Road (an arterial; and

WHEREAS, the Board agrees with DOB as to the appellant's second argument, for the reasons given; and

WHEREAS, accordingly, the Board finds that the 2005 Final Determination was properly issued and must be upheld; and

WHEREAS, subsequent to issuance of the 2005 Final Determination and during the pendency of the instant appeal, the appellant submitted supplemental arguments to DOB, which resulted in the issuance of the 2006 Final Determination; and

WHEREAS, the 2006 Final Determination reads, in pertinent part:

“The following represents the final determination of 5 issues, raised by you, in connection with proposed BSA case for the above referenced addresses [7194 and 7196 Amboy Road]:

1. Obstruction within front yards, side yards, and rear yards areas. Specifically, overhang at front step of 7194 Amboy Road.

It is determined by inspection and plan review that said overhang is on 12” eave. Under 23-12 permitted obstruction in open space, an eave is allowable in a setback area. This office has found no impermissible obstruction in setback area.

2. Permissible obstruction in side yards, specifically, stairs descending from grade to cellar level within 5’ side yard.

Under 23-44(a) steps are permitted obstruction in side yards. The section does not specify whether stairs should ascend or descend.

3. Under ZR 107-465 the second floor of a residence must be setback from rear lot line by 30 feet.

Specifically, that the rear setback at the second floor of 7194 Amboy Road does not comply with the referenced section of the zoning

resolution.

Under ZR 107-465 in force at the time the job was approved and permitted as well as while the foundation was laid and completed, the second floor of an applicable structure must be set back 30’ from rear property line.

By inspection and review, this office has determined that the second floor at 7194 Amboy Road complies with section 107-465 and is setback in total 30’ from the rear lot line.

4. Curb cut under ZR 25-632(b) may only be 18’ from splay to splay for the lots at least 33’ in width.

Specifically, the curb cut at 7194 Amboy is 27’-0” and therefore does not comply.

This office is in receipt of a letter from FDNY requesting that the access road constructed to access road 7196 Amboy Road shall be a minimum of 20’ wide to accommodate emergency vehicles. Therefore, under 25-631, under exception for fire department access, the curb cut is permitted to be 20’ to match the width of the access road.

Furthermore, applicant received permission from the Acting Borough Commissioner to construct and maintain an additional 7’-6” curb cut contiguous with private access entry to accommodate entry to garage at 7194 Amboy.

5. Lastly, construction within the widening line and record line is prohibited.

Specifically, that major improvements have been constructed within said widening line at 7194 Amboy Road.

At the time of permitting and construction, DOB approved non-major improvements within the widening line.”; and

WHEREAS, in a July 17, 2006 submission, the appellant addressed some of these issues and raised an additional issue regarding tree removal; and

WHEREAS, specifically, the appellant alleges that that NB No. 500573319 (one of the Revised Permits, relating to the building at 7196 Amboy Road) is invalid because: 1) the proposed building eave overhangs a 20-foot arterial setback applicable in the SSRD, contrary to another provision within ZR § 107-251(b); (2) the stairs and an unenclosed porch shown on the approved plans for 7196 Amboy Road may penetrate the same setback area; and (3) the driveway grade at 7196 Amboy Road is excessive, contrary to ZR § 25-632(g); and

WHEREAS, the appellant also makes a fourth argument, that both revised Permits (NB Nos. 500573300 and 500573319) are invalid because the curb cut providing access to 7196 and 7194 Amboy Road is too wide; and

WHEREAS, finally, the appellant argues that as to NB No. 500573293, which relates to 26 Joline Avenue, no required tree restoration occurred following the removal of trees, as required pursuant to ZR § 107-321; and

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WHEREAS, as to the first and second arguments, the appellant notes that ZR § 107-251(b) provides, in sum and substance, that along portions of arterials (such as Amboy Road), a 20 ft. building setback shall be provided for the full length of the front lot line abutting such arterial, and that the setback area shall be unobstructed from its lowest level to the sky, except as otherwise permitted; and

WHEREAS, the appellant alleges that the plans for the building at 7196 Amboy Road show eaves that overhang this setback area, as well as stairs and a porch that appear to penetrate it; and

WHEREAS, DOB responds that NB No. 500573319 complies with ZR § 107-251(b) by providing a 20-foot building setback for the full length of the front lot line abutting an arterial street notwithstanding a building eave that penetrates twelve inches of the setback area; and

WHEREAS, DOB notes that certain building elements, including eaves, may penetrate arterial setback areas without undermining the intent of ZR § 107-251(b) as long as they are listed as permitted obstructions in front yards under ZR § 23-44; and

WHEREAS, DOB also submitted a letter from the Department of City Planning dated July 31, 2006, confirming that CPC intended arterial setback areas to function as extended front yards to serve as visual enhancement of major roadways, and that certain obstructions are thus permissible pursuant to underlying front yard regulations; and

WHEREAS, as to the stair and unenclosed porch, DOB makes essentially the same argument, and again cites to the DCP letter dated July 31, 2005; and

WHEREAS, DOB notes that pursuant to ZR § 23-44, stairs are identified as a permitted obstruction under the category “steps and ramps for access by the handicapped” and unenclosed porches are included under the permitted obstruction category “terraces or porches, open.”; and

WHEREAS, DOB concludes that the steps and unenclosed porch at 7196 Amboy Road may extend into the 20-foot arterial setback area without contravening ZR § 107-251(b); and

WHEREAS, as to the third argument, the appellant notes that ZR § 25-632(g) (Driveway and curb cut regulations in lower density growth management areas), provides that the maximum grade of driveways is limited to 11 percent; and

WHEREAS, the appellant notes that the plans for the building at 7196 Amboy Road reflect an impermissible driveway grade; and

WHEREAS, DOB responds that this claim is moot, since the Revised Permit for 7196 Amboy Road was issued on April 21, 2004, before the August 12, 2004 effective date of ZR § 25-632(g); and

WHEREAS, further, the Board received testimony confirming that the driveway was constructed prior to the effective date of this provision and therefore vested; and

WHEREAS, as to the fourth argument, the appellant notes that pursuant to ZR § 25-632(b), a zoning lot with at least 33 feet of frontage along a street with a driveway wider

than 12 feet may have a curb cut with a maximum width of 18 feet; and

WHEREAS, here, a plan titled “Drawing A-1 FD” shows a 24-foot wide curb cut with two 18-inch wide splays, servicing the two proposed buildings; and

WHEREAS, in a submission dated September 1, 2006, DOB states that it approved the wider curb cut to satisfy the requirements of the Fire Department; and

WHEREAS, ZR § 25-631 provides: “[W]here Fire Department regulations set forth in the Administrative Code of the City of New York require curb cuts of greater width than listed in this chart, such curb cuts may be increased to the minimum width acceptable to the Fire Department.”; and

WHEREAS, DOB cites to an August 29, 2006 letter from Patrick McNally, Chief of Operations at the Fire Department, which states in sum and substance that the Fire Department would not have approved a curb cut measuring less than 24 feet wide; and

WHEREAS, DOB notes that the cut is 24 ft., with two standard 18-inch wide splays, and therefore concludes that the revised Permits properly allowed the curb cut to exceed the limitation of ZR § 25-632(b); and

WHEREAS, the Board agrees that the 24 ft. curb cut, with the splays, is permitted and compliant; and

WHEREAS, finally, the Board notes that the tree removal allegation is not properly before the Board, since it was not subject to final DOB determination in either the 2005 or 2006 Final Determinations; and

WHEREAS, DOB has indicated that it will review this allegation, and take appropriate action as indicated; and

WHEREAS, accordingly, the Board declines to render a determination as to this issue; and

WHEREAS, in sum, the Board has reviewed the appellant’s arguments as to those determinations appealed from the 2006 Final Determination, as well as DOB’s responses; and

WHEREAS, the Board again credits DOB’s responses, and finds that there is no basis to revoke the Revised Permits; and

WHEREAS, accordingly, the Board upholds the 2006 Final Determination as well.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Acting Staten Island Borough Commissioner, dated June 14, 2005 and a subsequent determination of the Staten Island Borough Commissioner, dated May 24, 2006, as well as the revocation of DOB Permit Nos. 500573300 and 500573319, is hereby denied.

Adopted by the Board of Standards and Appeals, September 19, 2006.

364-05-A

APPLICANT – Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.

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SUBJECT – Application December 19, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 87-30 167th Street, 252’ north of the corner formed by the intersection of Hillside Avenue and 167th Street, Block 9838, Lots 114 and 116, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

THE RESOLUTION:

WHEREAS, this matter is an application for a Board determination that the owner of the premises has acquired a common-law vested right to continue development at the subject premises under regulations applicable to an R5 zoning district; and

WHEREAS a public hearing was held on this application on April 14, 2006 after due notice by publication in *The City Record*, with continued hearings on June 6, 2006, July 11, 2006, July 25, 2006, August 22, 2006, and then to decision on September 19, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the Board notes that this matter was heard concurrently with BSA Cal. No. 365-04-A; and

WHEREAS, the subject application relates to 87-30 167th Street (Tentative Lot 114) and BSA Cal. No. 365-05-A relates to 87-32 167th Street (Tentative Lot 116); the two lots are adjacent; and

WHEREAS, in the interest of convenience, the two applications were heard concurrently, and the record is the same for both; and

WHEREAS, Community Board 8, Queens, and Council Member Gennaro recommend approval of this application; and

WHEREAS, the Queens Civic Congress and Assembly Member McLaughlin oppose this application; and

WHEREAS, the Department of Buildings appeared in opposition only as to this matter and not BSA Cal. No. 365-05-A, for reasons discussed below; and

WHEREAS, the subject premises is situated on the west side of 167th Street, approximately 250 ft. north of the corner formed by the intersection of Hillside Avenue and 167th Street; and

WHEREAS, the premises is comprised of the two above-mentioned tentative tax lots, each of which is 30 ft. in width; and

WHEREAS, the applicant states that the developer/owner of the subject premises (hereinafter, the “Developer”) purchased the site in 2001 and demolished the

pre-existing home; and

WHEREAS, at this time, the premises was within an R5 zoning district; and

WHEREAS, the applicant states that the Developer then filed at DOB to sub-divide the premises, and obtained the two tentative tax lot numbers and street addresses; and

WHEREAS, on July 31, 2003, DOB approved plans for the construction of a conforming and complying three-story semi-detached home on each of the new lots; and

WHEREAS, the applicant states that the two proposed homes share a party wall and continuous foundation walls; and

WHEREAS, there was a separate DOB application for each home: (1) DOB Application No. 401612359 for the proposed home on Lot 116; and (2) DOB Application No. 401612340 for the proposed home on Lot 114; and

WHEREAS, as part of the plan approval for Application No. 401612340, DOB implemented what is known as a “List of Required Items”, which is a checklist of items that must be received by DOB prior to the issuance of a building permit under the application number; and

WHEREAS, one of the required items reads “Site Safety Plan”; this requirement was listed on the “List of Required Items” as of July 31, 2003; and

WHEREAS, over one year later, on September 3, 2004, the Developer sought construction permits under the two applications; and

WHEREAS, on this date, DOB issued a permit for Application No. 4016122359, for the proposed home on Lot 116 (hereinafter, the “116 Permit”); and

WHEREAS, however, DOB refused to issue a permit for Application No. 401612340, for the proposed home on Lot 114 (hereinafter, the “114 Permit”), on the basis that the “Site Safety Plan” requirement had not been satisfied; and

WHEREAS, the developer commenced foundation construction on Lot 116, and despite not possessing a permit for Lot 114, illegally commenced foundation construction on that lot as well; and

WHEREAS, the applicant states, and DOB concedes, that the “Site Safety Plan” requirement was placed on the “List of Required Items” for Application No. 401612340 in error, as such a plan is only required for proposed buildings that are greater than 15 stories in height; and

WHEREAS, the applicant states that the “Site Safety Plan” requirement was waived by DOB on September 22, 2004, at the Developer’s request; and

WHEREAS, DOB notes that on this date, the Developer did not bring to DOB a copy of the application folder for Application No. 401612340 and therefore did not obtain the 114 Permit; and

WHEREAS, DOB states that the Developer retains the application folder until issuance of a permit; DOB would only possess the folder after the issuance; and

WHEREAS, on October 13, 2004 (hereinafter, the “Rezoning Date”), the City Council voted to approve the Jamaica Hill Rezoning, which rezoned the premises from R5 to R4A and rendered the two proposed homes both non-conforming and non-complying; and

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WHEREAS, specifically, as to use, the two proposed semi-detached three-family homes are not permitted; only single- and two-family detached homes are permitted under R4A zoning district regulations; and

WHEREAS, as to Floor Area Ratio (FAR), the home on Lot 114 has a proposed FAR of 1.09 and the home on Lot 116 has a proposed FAR of 1.04; the maximum permitted under the R4A zoning parameters is 0.90, including an attic allowance of 0.15; and

WHEREAS, on December 14, 2004, over two months after the Rezoning Date, the Developer erroneously obtained the 114 Permit from DOB; however, the 114 Permit was invalid because it authorized construction of a home that did not conform and comply with the new R4A zoning district parameters; and

WHEREAS, on February 7, 2005, DOB issued a stop-work order as to the 114 Permit on this basis; on this same date, DOB also issued a stop-work order as to the 116 Permit; and

WHEREAS, the applicant represents that at the time the two companion applications were filed, each of the proposed homes were about 85 percent complete; and

WHEREAS, the applicant requests that the Board find that the Developer has obtained a vested right to continue construction on both homes; and

WHEREAS, for reasons set forth in a separate resolution, the Board grants the application made under BSA Cal. No. 365-05-A the date hereof; and

WHEREAS, under the instant application, the applicant has also asked the Board to vest the right to complete construction of the proposed home on Lot 114 under the prior R5 zoning; and

WHEREAS, in spite of the fact that foundation work on Lot 114 was done illegally in the absence of a permit, the applicant makes the following arguments, as summarized in a September 12, 2006 submission: (1) the Developer was entitled to the 114 Permit as a matter of right and the Board should issue it *nunc pro tunc*; (2) the right to finish construction on both homes was vested pursuant to the "single integrated project theory" ("SIPT"), as established by New York State courts; (3) it would be inequitable to allow DOB to repudiate its prior conduct of refusing to issue the 114 Permit; and (4) the Developer has met the test for common law vesting as to the entire premises, including Lot 114; and

WHEREAS, as to the first argument, the applicant states, in sum and substance, that DOB had no discretion to deny the issuance of the 114 Permit on September 14, 2004, and that such denial was an arbitrary and therefore impermissible act; and

WHEREAS, the applicant notes that the "Site Safety Plan" requirement was clearly erroneous and solely the fault of DOB; and

WHEREAS, the applicant contends that on this basis, the Board should reinstate the 114 Permit and deem it valid on a retroactive basis to September 14, 2006, thereby legalizing all work performed on Lot 114 after that date; and

WHEREAS, in support of this contention, the applicant

cites to certain cases where courts found that where the governmental entity that issues construction permits improperly placed obstacles in the way of a developer as they attempt to vest construction, a construction permit may be reinstated by the reviewing court *nunc pro tunc*; and

WHEREAS, the applicant cites to Matter of Faymor Development Co., 57 A.D.2d 928 (2d Dep't. 1977); Matter of Bayswater Health Related Facility v. Karagheuzoff, 37 N.Y.2d 408 (1975); and Cooper et al. v. Dubow et al., 41 A.D.2d 843 (2d Dep't. 1973); and

WHEREAS, the applicant argues that the improper "Site Safety Plan" requirement was an improperly placed obstacle, and but for DOB's interference, the Developer would have been able to obtain the 114 Permit on the same date that the 116 Permit was obtained; and

WHEREAS, DOB disagrees, stating that there was no improper municipal interference as occurred in Faymor, Bayswater and Cooper; and

WHEREAS, instead, the listing of the requirement was merely a clerical error that could have easily been remedied, as occurred when the Developer brought it to the attention of DOB on September 22, 2004; and

WHEREAS, further, DOB notes that in the cited cases, the developers had actually obtained permits prior to the date of the zoning change, unlike the Developer here; and

WHEREAS, as a threshold issue, the Board notes that it does not have the authority to issue a building permit *nunc pro tunc*, since this is an equitable power reserved to courts of law and not zoning boards; and

WHEREAS, further, even if it did possess such authority, the Board agrees with DOB's arguments; and

WHEREAS, the Board observes that the 114 Permit was not obtained as of the Rezoning Date and that all work on Lot 114 was therefore performed illegally; and

WHEREAS, the Board notes that the requirement of a validly issued permit is a fundamental requirement for a finding of common law vested rights (see e.g. Vil. Of Asharokan v. Pitassy, 119 A.D.2d 404 (1986)); and

WHEREAS, here, the erroneous "Site Safety Plan" requirement was known to the Developer on July 31, 2003, over one year prior to Rezoning Date; and

WHEREAS, while the clerical error is not the Developer's fault, the Board agrees that nothing prevented the Developer from rectifying this error well in advance of the Rezoning Date so that the 114 Permit could be issued in time for construction on Lot 114 to commence; and

WHEREAS, moreover, the Board agrees that the Developer had the opportunity to obtain the 114 Permit prior to the Rezoning Date after remedying the DOB error on September 28, 2004, but inexplicably failed to do so; and

WHEREAS, DOB notes, and the applicant does not dispute, that DOB allows all registered architects and professional engineers to have professional priority to review problems with applications at DOB borough offices, on a daily walk-in basis; and

WHEREAS, DOB also notes that the project architect is on the Queens Borough office walk-in list; and

WHEREAS, thus, in spite of being in a position to

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obtain the 114 Permit, the Developer failed to do; and

WHEREAS, the Board also agrees that the instant set of circumstances is drastically different than those presented in Faymor, Bayswater, and Cooper; and

WHEREAS, in all three of these cases, the developers had obtained permits that were subsequently revoked on impermissible grounds; and

WHEREAS, here, the Developer did not obtain the 114 Permit but illegally proceeded with construction on Lot 114 anyway; and

WHEREAS, further, none of the developers in the cited cases could easily remedy the alleged problems with the permits; and

WHEREAS, here, the Developer had a clear and unobstructed opportunity to obtain the 114 Permit; nothing stood in the way of this aside from the Developer's own failure to take appropriate action; and

WHEREAS, in sum, there was no municipal interference whatsoever, just a clerical error that was resolved in sufficient time for the Developer to have obtained the 114 Permit prior to the Rezoning Date; and

WHEREAS, thus, the Board is not persuaded by the applicant's first argument, and declines to order the re-issuance of the 114 Permit *nunc pro tunc*; and

WHEREAS, the applicant's second argument is that under the SIPT, the Developer has obtained a vested right based upon the work performed under the 116 Permit; and

WHEREAS, the SIPT, as applied by New York courts and a few other state courts, allows a developer to vest uncompleted, even uninitiated, components of a larger development project (see e.g. *Telimar Homes v. Miller*, 14 A.D.2d 586 (2nd Dep't, 1961); *Putnam Armonk Inc. v. Town of Southeast*, 52 A.D.2d 10, (2nd Dep't, 1976); and *Cypress Estates, Inc. v. Moore*, 273 N.Y.S.2d 509, (Sup. 1966)); and

WHEREAS, the Board has reviewed the relevant cases, and observes that the SIPT may be applied by a court if the following requirements are met: (1) the reviewing approval body was on notice that the various building components were intended to be part of larger, integrated development; (2) some work has been performed on a fundamental component of the development, pursuant to an approval; (3) some expenditure and physical work that benefits all of the components of the development (such as roads or sewers) has been undertaken; (4) economic loss would result from the inability to proceed under the prior zoning, due to the inability to adapt the work to a complying development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, the Board observes that the SIPT has been primarily applied to large-scale developments in upstate New York, involving multiple subdivision or plat approvals and numerous buildings; and

WHEREAS, nevertheless, the applicant argues that the two proposed homes, by virtue of their shared party and foundation walls, are a lower-scale version of a single integrated project; and

WHEREAS, the applicant argues, and the Board agrees, that in the SIPT cases, it is not necessary that building

permits have been obtained for each and every building proposed to be vested; and

WHEREAS, in this sense, the Board observes that the SIPT appears to be an exception to the general rule that a valid permit is required in order to vest; and

WHEREAS, the SIPT presumes that for large-scale multi-plat, multi-unit developments, it is not feasible or desirable to obtain permits for every building in every plat at the same time; and

WHEREAS, this is because such projects are developed in stages, and it is more logical for permits to be obtained on a plat by plat basis; and

WHEREAS, the applicant argues that the subject development of the subject two semi-attached homes meets the requirements of the SIPT; and

WHEREAS, first, the applicant notes that DOB approved a site plan showing both homes, and thus was on notice that the two homes were proposed to be developed as a single integrated development; and

WHEREAS, the applicant then notes that the foundation of the home on the 116 Lot was constructed, satisfying the requirement that work on a fundamental component of the development was completed; and

WHEREAS, further, the party wall was constructed under the 116 Permit, representing physical work and expenditure related to the entire integrated development; and

WHEREAS, finally, the applicant contends that the existing construction on the premises could not be adapted to a complying development under the R4A zoning without significant loss, given the degree of construction already performed that would have to be either demolished or structurally altered; and

WHEREAS, the applicant suggests that under the SIPT, the lack of the 114 Permit and the illegal construction on Lot 114 could be ignored by the Board; and

WHEREAS, the Board has carefully considered the arguments made by the applicant; and

WHEREAS, the Board acknowledges that there are some similarities between the projects discussed in the SIPT cases and the instant matter; and

WHEREAS, however, the Board also notes that there does not appear to be any case precedent for the application of the SIPT to a development project as small as the one presented here; and

WHEREAS, thus, the Board rejects the applicant's argument because it is not persuaded that the SIPT should be applied to low-scale development projects such as the Developer's; and

WHEREAS, since the project only encompasses two homes, the Developer could easily obtain the permits needed for both at the same time, and indeed attempted to do so; and

WHEREAS, in fact, the applicant argues that the 114 and 116 Permits should only have been issued by DOB at the same time, since this was not a project that was anticipated to be constructed in stages, and since the compliance of the home on Lot 116 purportedly relies upon the existence of the home on Lot 114; and

WHEREAS, this is different than the large-scale multi-

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plat projects discussed in the SIPT cases, where simultaneous obtainment of permits for each and every building is not feasible; and

WHEREAS, accordingly, here, no reason exists to deviate from the general rule that vesting can only occur where, prior to the zoning change, construction has proceeded pursuant to a valid permit; and

WHEREAS, in sum, the Board concludes that the SIPT does not apply to the Developer's two home project; and

WHEREAS, even assuming that it did apply, the Board finds that not all of the SIPT requirements have been met; and

WHEREAS, as discussed above, the applicant contends that the home proposed for Lot 116 does not comply with the prior R5 zoning requirements in the absence of the home on Lot 114; and

WHEREAS, the applicant argues that this supports the notion that the two homes are fundamentally integrated and that economic harm would result if no second home could be built on Lot 114; and

WHEREAS, notwithstanding these allegations, the Board has reviewed the record and can find no evidence that the home proposed for Lot 116, if completed, would not comply with the R5 zoning parameters; and

WHEREAS, further, the Board finds that an economic harm argument cannot be predicated on costs related to the demolition or alteration of work completed on Lot 114, since any such work was performed illegally, with the Developer fully cognizant of its illegality prior to its commencement; and

WHEREAS, the Board observes that none of the SIPT cases involved instances where the developer proceeded with construction knowingly in violation of permitting requirements; and

WHEREAS, the Board finds that this fact alone is a sufficient reason not to apply the SIPT to the instant facts; and

WHEREAS, accordingly, the Board rejects the applicant's second argument; and

WHEREAS, the applicant's third argument is that it would be inequitable to deny the Developer the right to proceed under the prior R5 zoning since DOB's plan approval indicated to him that he would have the right to construct both buildings; and

WHEREAS, more specifically, the applicant argues that that the Developer would not have incurred any expense associated with construction on Lot 114 if he had not reasonably assumed that the 114 Permit was to be issued; and

WHEREAS, in support of this argument, the applicant cites to a Georgia case *Cohn Communities, Inc. v. Clayton County*, 359 S.E.2d 887 (1987), in which the court held that "where a landowner makes a substantial change in position by expenditures in reliance upon the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is entitled to have the permit issued despite a change in the zoning ordinance"; and

WHEREAS, the Board notes that this is an equitable

argument based upon state precedent; and

WHEREAS, while the Board acknowledges that the Cohn case may be valid law in the State of Georgia, it respectfully disagrees that the holding of this case applies to development in the State of New York; and

WHEREAS, as noted above, in New York, the general rule is that vested rights arise out of the issuance of a permit for the construction of the building, not out of a plan approval; and

WHEREAS, the applicant also cites to *Greene v. Brach*, 40 A.D.2d 1048 (1972) for the same proposition; and

WHEREAS, however, the Board notes that this case is not similar to the instant matter; and

WHEREAS, in *Greene*, the developer, after commencing construction pursuant to valid building permits, was subjected to a myriad of contradictory municipal determinations that obstructed further construction; and

WHEREAS, the court ultimately found that the developer had obtained a vested right to complete construction pursuant to a plat approval that did not reflect the form of construction contemplated by the permits; and

WHEREAS, however, in reaching this conclusion, the court noted that the developer was compelled to change his development due to the contradictory actions of the municipality; and

WHEREAS, and as in other cases already discussed herein, the developer actually had permits; and

WHEREAS, here, there was no municipal interference and no permit authorizing development on Lot 114; and

WHEREAS, while the Developer may have expected to receive a permit for Lot 114, construction is not authorized and vesting may not occur unless and until the permit is obtained; and

WHEREAS, the Board has no authority or desire to rewrite the law to suit the needs of the Developer, and therefore rejects the applicant's third argument; and

WHEREAS, finally, as noted above, the Board does not possess the broad equitable powers needed to render the determination that the applicant suggests, even if New York precedent for it existed; and

WHEREAS, the applicant's fourth argument is that it has met the technical findings of substantial construction and substantial construction as to both proposed homes; and

WHEREAS, however, this argument presumes that the Board accepts any of the three prior arguments, and therefore is in a position to ignore the lack of a valid permit as to construction on Lot 114; and

WHEREAS, since the Board disagrees with these arguments, consideration of the applicant's fourth argument is unnecessary; and

Therefore it is Resolved that this application made under BSA Cal. No. 364-05-A, relating to 87-30 167th Street (Tentative Lot 114) and DOB Application No. 401612340 is hereby denied.

Adopted by the Board of Standards and Appeals, September 19, 2006.

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365-05-A

APPLICANT – Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 87-32 167th Street, 252' north of the corner formed by the intersection of Hillside Avenue and 167th Street, Block 9838, Lot 116, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a Board determination that the owner of the premises has acquired a common-law vested right to continue development at the subject premises under regulations applicable to an R5 zoning district; and

WHEREAS a public hearing was held on this application on April 4, 2006 after due notice by publication in *The City Record*, with continued hearings on June 6, 2006, July 11, 2006, July 25, 2006, August 22, 2006, and then to decision on September 19, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the Board notes that this matter was heard concurrently with BSA Cal. No. 364-04-A; and

WHEREAS, the subject application relates to 87-32 167th Street (Tentative Lot 116) and BSA Cal. No. 364-05-A relates to 87-30 167th Street (Tentative Lot 114); the two lots are adjacent; and

WHEREAS, in the interest of convenience, the two applications were heard concurrently and the record is the same for both; and

WHEREAS, Community Board 8, Queens, and Council Member Gennaro recommend approval of this application; and

WHEREAS, the Queens Civic Congress and Assembly Member McLaughlin oppose this application; and

WHEREAS, the Board notes that the Department of Buildings appeared in opposition only as to BSA Cal. No. 364-05-A, not the instant application; and

WHEREAS, the subject premises is situated on the west side of 167th Street, approximately 250 ft. north of the corner formed by the intersection of Hillside Avenue and 167th Street; and

WHEREAS, the premises is comprised of the two above-mentioned tentative tax lots, each of which is 30 ft. in

width; and

WHEREAS, the applicant states that the developer/owner of the subject premises (hereinafter, the “Developer”) purchased the site in 2001 and demolished the pre-existing home; and

WHEREAS, at this time, the premises was within an R5 zoning district; and

WHEREAS, the applicant states that the Developer then filed at DOB to sub-divide the premises, and obtained the two tentative tax lot numbers and street addresses; and

WHEREAS, on July 31, 2003, DOB approved plans for the construction of a conforming and complying three-story semi-detached home on each of the new lots; and

WHEREAS, the applicant states that the two proposed homes share a party wall and continuous foundation walls; and

WHEREAS, there was a separate DOB application for each home: (1) DOB Application No. 401612359 for the proposed home on Lot 116; and (2) DOB Application No. 401612340 for the proposed home on Lot 114; and

WHEREAS, as part of the plan approval for Application No. 401612340, DOB implemented what is known as a “List of Required Items”, which is a checklist of items that must be received by DOB prior to the issuance of a building permit under the application number; and

WHEREAS, one of the required items reads “Site Safety Plan”; this requirement was listed on the “List of Required Items” as of July 31, 2003; and

WHEREAS, over one year later, on September 3, 2004, the Developer sought construction permits under the two applications; and

WHEREAS, on this date, DOB issued a permit for Application No. 4016122359, for the proposed home on Lot 116 (hereinafter, the “116 Permit”); and

WHEREAS, however, DOB refused to issue a permit for Application No. 401612340, for the proposed home on Lot 114 (hereinafter, the “114 Permit”), on the basis that the “Site Safety Plan” requirement had not been satisfied; and

WHEREAS, the developer commenced foundation construction on Lot 116, and despite not possessing a permit for Lot 114, illegally commenced foundation construction on that lot as well; and

WHEREAS, the applicant states, and DOB concedes, that the “Site Safety Plan” requirement was placed on the “List of Required Items” for Application No. 401612340 in error, as such a plan is only required for proposed buildings that are greater than 15 stories in height; and

WHEREAS, the applicant states that the “Site Safety Plan” requirement was waived by DOB on September 22, 2004, at the Developer’s request; and

WHEREAS, DOB notes that on this date, the Developer did not bring to DOB a copy of the application folder for Application No. 401612340 and therefore did not obtain the 114 Permit; and

WHEREAS, DOB states that the Developer retains the

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application folder until issuance of a permit; DOB would only possess the folder after the issuance; and

WHEREAS, on October 13, 2004 (hereinafter, the "Rezoning Date"), the City Council voted to approve the Jamaica Hill Rezoning, which rezoned the premises from R5 to R4A and rendered the two proposed homes both non-conforming and non-complying; and

WHEREAS, specifically, as to use, the two proposed semi-detached three-family homes are not permitted; only single- and two-family detached homes are permitted under R4A zoning district regulations; and

WHEREAS, as to Floor Area Ratio (FAR), the home on Lot 114 has a proposed FAR of 1.09 and the home on Lot 116 has a proposed FAR of 1.04; the maximum permitted under the R4A zoning parameters is 0.90, including an attic allowance of 0.15; and

WHEREAS, on December 14, 2004, over two months after the Rezoning Date, the Developer erroneously obtained the 114 Permit from DOB; however, the 114 Permit was invalid because it authorized construction of a home that did not conform and comply with the new R4A zoning district parameters; and

WHEREAS, on February 7, 2005, DOB issued a stop-work order as to the 114 Permit on this basis; on this same date, DOB also issued a stop-work order as to the 116 Permit; and

WHEREAS, the applicant represents that at the time the two companion applications were filed, each of the proposed homes were about 85 percent complete; and

WHEREAS, the applicant requests that the Board find that the Developer has obtained a vested right to continue construction on both homes; and

WHEREAS, at the outset, the Board notes that DOB does not oppose the application to vest the right to continue construction under the 116 Permit, since it was lawfully obtained prior to the Rezoning Date, and the foundation and much of the superstructure of the home was completed prior to the Rezoning Date; and

WHEREAS, assuming that a valid permit has been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change, and where serious loss will result if the owner is denied the right to proceed under the prior zoning, and; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, here, the Board agrees that as to Lot

116, the applicant has met this test; and

WHEREAS, the Board notes that as of the Rezoning Date: (1) the 116 Permit was lawfully obtained; (2) foundation construction was completed; and (3) significant expenditures were made towards construction on Lot 116; and

WHEREAS, the applicant has also established that serious loss would result if the Developer were compelled to comply with the new R4A district regulations as to Lot 116, since all existing foundation and superstructure work would have to be removed, and a new building would have to be designed and constructed; and

WHEREAS, the Board notes that the applicant has submitted evidence of the above, in the form of pictures, concrete tickets, invoices for labor and material, copies of cancelled checks, and affidavits from construction personnel and the project architect; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction on Lot 116; thus, as reflected below, the Board grants the instant application; and

WHEREAS, however, as set forth in a separate resolution, the Board is not granting the application brought under BSA Cal. No. 364-05-A for the proposed home on Lot 114; and

WHEREAS, the Board observes that because the proposed home on Lot 116 was originally designed to be a semi-attached home possessing certain shared elements with the home proposed for Lot 114, if the Developer decides to use this grant rather than proceed under the R4A zoning, certain design modifications may be required for the Lot 116 home; and

WHEREAS, the Board has no objection to such modifications provided that the footprint, floor area and height of the home proposed for Lot 116 do not increase from what was permitted under DOB Job No. 401612359, and provided that any such changes are reviewed and approved in advance by the Chair.

Therefore it is Resolved that this application, brought under BSA Cal. No. 365-05-A and relating to 87-32 167th Street (Tentative Lot 116) and DOB Permit No. 401612359 is granted; thus, DOB Permit No. 4016122359, as well as all related permits for various work types, either already issued or necessary to complete construction of the proposed home and obtain a certificate of occupancy, is reinstated for four years from the date hereof, on condition that any minor plan modifications shall be subject to further review and approval of the Chair.

Adopted by the Board of Standards and Appeals, September 19, 2006.

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34-06-A

APPLICANT – Victor K. Han, for Dimitrios Halkiadakis, owner.

SUBJECT – Application March 1, 2006 – proposed construction of a three family, three story residence with accessory three car garage located within the bed of a mapped street, contrary to Section 35 of the General City Law. Premises is located in a R4 Zoning District.

PREMISES AFFECTED – 41-23 156th Street, east side of 156th Street, 269’ north of Sanford Avenue, Block 5329, Lot 15, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Sungkyn Park.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 6, 2006, acting on Department of Buildings Application No. 402274613, reads, in pertinent part:

“Proposed new building in a mapped street, contrary to Section 35 of the General City Law of the City of New York .Board of Standards and Appeals grant is required.”; and

WHEREAS, after due notice by publication in the *City Record*, a public hearing was initially scheduled for September 12, 2006, was postponed to September 19, 2006 when a public hearing was held on this application, and then moved to closure and decision on this same date; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, by letter dated April 13, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 5, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated, July 28, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 6, 2006, acting on Department of Buildings Application No. 402274613, is modified by the power vested in the Board by Section 35 of the

General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 20, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2006.

90-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner.

SUBJECT – Application May 8, 2006 – Proposal to permit reconstruction and enlargement of an existing one family dwelling located in the bed of a mapped street, and the upgrade of an existing private disposal system in the bed of a mapped street and service lane is contrary to Section 35, Article 3, General City Law and Buildings Department Policy.

PREMISES AFFECTED – 9 Bedford Avenue, north side of Bedford Avenue, intersection of mapped Bayside Drive and Beach 202nd Street, Block 163, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 19, 2006, acting on Department of Buildings Application No. 402302450, reads, in pertinent part:

“A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A2- The proposed upgraded private disposal system

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is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on September 19, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated May 17, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated June 9, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 11, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, April 19, 2006, acting on Department of Buildings Application No. 402302450 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 9, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2006.

167-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Janet and John Durante, owners.

SUBJECT – Application July 31, 2006 – Proposed reconstruction and enlargement of existing single family dwelling not fronting a mapped street is contrary to Article 3 Section 36 of the General City Law. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 519 Browns Boulevard, Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 10, 2006 acting on Department of Buildings Application No. 402403582, reads, in pertinent part:

“A1– The street giving access to the existing dwelling to be altered is not duly placed on the official map of the City of New York, therefore:

A) No permit or Certificate of Occupancy can be issued per Article 3, Section 36 of the General City Law;

B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space and is therefore contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on September 19, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated August 8, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, July 10, 2006, acting on Department of Buildings Application No. 402403582, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received July 31, 2006 ”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws

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under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2006.

168-06-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Tom Elbe, lessee.

SUBJECT – Application August 3, 2006 – Proposed reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 176 Reid Avenue, west of Reid Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Valentino Pompeo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 17, 2006 acting on Department of Buildings Application No. 402404698, reads, in pertinent part:

“A1– The street giving access to the existing dwelling to be altered is not duly placed on the official map of the City of New York, therefore:

- A) No permit or Certificate of Occupancy can be issued per Article 3, Section 36 of the General City Law;
 - B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space and is therefore contrary to Section 27-291 of the Administrative Code.”;
- and

WHEREAS, a public hearing was held on this application on September 19, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated August 8, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, July 17, 2006, acting on Department of Buildings Application No. 402404698, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 3, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2006.

69-06-BZY

APPLICANT – Stuart A. Klein, for SMJB Associates, LLC, owner.

SUBJECT – Application April 19, 2006 – Proposed extension of time to complete construction of a minor development pursuant to ZR 11-331 for a six- story mixed use building. Prior zoning R-6. New zoning district is R5-B as of April 5, 2006.

PREMISES AFFECTED – 1599 East 15th Street, northeast corner of East 15th Street and Avenue P, Block 6762, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Stuart Klein.

For Administration: Amandus Derr, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, SEPTEMBER 19, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar and
Commissioner Collins.

ZONING CALENDAR

72-06-BZ

CEAR #06-BSA-076M

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for
SL Green Realty Corporation, owner; Equinox One Park
Avenue, Incorporated, lessee.

SUBJECT – Application April 19, 2006 – Special Permit
pursuant to Z.R. §73-36 to allow the proposed PCE within a
portion of the first floor and the entire second floor of the
existing 18-story commercial building. The premise is located
in a C5-3 and C6-1 zoning district. The proposal is contrary
to Z.R. Section 32-10.

PREMISES AFFECTED – 1 Park Avenue, a/k/a 101/17 East
32nd Street and East 33rd Street, East south of Park Avenue
between E. 32nd Street and East 33rd Street, Block 888, Lot 1,
Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and
Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough
Commissioner, dated April 17, 2006, acting on Department
of Buildings Application No. 104397065, reads, in pertinent
part:

“Proposed Physical Culture Establishment is not
permitted as of right in C5-3 and C6-1 zoning
district and it is contrary to ZR 32-10.”; and

WHEREAS, this is an application under ZR §§ 73-36
and 73-03, to permit, within a C5-3 and C6-1 zoning district a
physical culture establishment (PCE) on a portion of the first
floor and the entire second floor of an existing 18-story
commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this
application on August 22, 2006 after due notice by
publication in *The City Record*, and then to decision on
September 19, 2006; and

WHEREAS, Community Board 5, Manhattan,
recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the

Board that it has no objection to this application; and

WHEREAS, the subject site is located on the east side
of Park Avenue, between East 32nd and East 33rd Streets; and

WHEREAS, the proposed PCE will occupy a total of
40,144 sq. ft. of floor area, with 856 sq. ft. on the first floor
and 39,288 sq. ft. on the second floor; and

WHEREAS, the PCE will be operated as Equinox
Fitness; and

WHEREAS, the applicant represents that the PCE will
offer facilities for weightlifting, cardiovascular exercise,
yoga, spinning, aerobics, massage, and physical therapy; and

WHEREAS, the PCE will have the following hours of
operation: Monday through Friday, 5:00 a.m. to 11:00 p.m.,
and Saturday and Sunday, 7:30 a.m. to 9:00 p.m.; and

WHEREAS, the Board finds that this action will
neither: 1) alter the essential character of the surrounding
neighborhood; 2) impair the use or development of adjacent
properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has
performed a background check on the corporate owner and
operator of the establishment and the principals thereof, and
issued a report which the Board has determined to be
satisfactory; and

WHEREAS, the establishment of the PCE will not
interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions
and safeguards imposed, any hazard or disadvantage to the
community at large due to the proposed special permit use is
outweighed by the advantages to be derived by the
community; and

WHEREAS, therefore, the Board has determined that
the evidence in the record supports the requisite findings
pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action
pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental
review of the proposed action and has documented relevant
information about the project in the Final Environmental
Assessment Statement, CEQR No. 06BSA076M, dated April
17, 2006; and

WHEREAS, the EAS documents show that the operation
of the PCE would not have significant adverse impacts on Land
Use, Zoning, and Public Policy; Socioeconomic Conditions;
Community Facilities and Services; Open Space; Shadows;
Historic Resources; Urban Design and Visual Resources;
Neighborhood Character; Natural Resources; Hazardous
Materials; Waterfront Revitalization Program; Infrastructure;
Solid Waste and Sanitation Services; Energy; Traffic and
Parking; Transit and Pedestrians; Air Quality; Noise;
Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation
of the PCE will not have a significant adverse impact on the
environment.

Therefore it is Resolved that the Board of Standards and
Appeals issues a Negative Declaration prepared in accordance
with Article 8 of the New York State Environmental
Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the

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Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-3 and C6-1 zoning district a PCE on a portion of the first floor and the entire second floor of an existing 18-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 14, 2006"–(5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on September 19, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Friday, 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, 7:30 a.m. to 9:00 p.m.; and

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2006.

94-06-BZ

APPLICANT – Dennis D. Dell'Angelo, for David & Rosa Soibelman, owner.

SUBJECT – Application May 12, 2006 – Pursuant to ZR 73-622 – Special Permit to construct a three story enlargement to an existing single family home creating non-complying conditions contrary to ZR 23-141 for open space and floor area ratio, ZR §23-47 less than the required rear yard and ZR §23-48 for less than the required side yards. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1221 East 29th Street, East side of East 29th Street, 150' South of Avenue L, Block 7647, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis Dell'Angelo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and

Commissioner Collins.....3
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 2, 2006, acting on Department of Buildings Application No. 302079587, reads, in pertinent part:

1. Proposed F.A.R. and O.S.R. constitutes an increase in the degree of existing non-compliance contrary to Sec. 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yards contrary to Sec. 23-48 Z.R. and less than the required rear yard contrary to Sec. 23-47 Z.R.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-47 and 23-48; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City Record*, and then to decision on September 19, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the east side of East 29th Street, 150 feet south of Avenue L; and

WHEREAS, the subject lot has a total lot area of 3,150 sq. ft., and is occupied by a 1,708.45 sq. ft. (0.54 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,708.45 sq. ft. (0.54 FAR) to 3,140 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,575 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the open space ratio from 1.5 to .57; and

WHEREAS, the proposed enlargement will maintain one side yard at 3'-4½", an existing non-compliance, and reduce the other side yard from 9'-1½" to 6'-7½" (side yards with a minimum total width of 10'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, the proposed enlargement will maintain the existing non-complying 14'-1½" front yard (a minimum front yard of 15'-0" is required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 44'-3" to 20'-10" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the

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rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, at hearing, the Board directed the applicant that changes to the existing garage should be per DOB approval; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and § 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for FAR, open space ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-47, and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 12, 2006"-(5) sheets, "August 9, 2006"-(6) sheets, "September 6, 2006"-(1) sheet and "September 7, 2006"-(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,140 sq. ft., a total FAR of .99, all as illustrated on the BSA-approved plans;

THAT there shall be no more than 476.8 sq. ft. of floor area in the attic;

THAT the proposed shed shall be as approved by DOB;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2006.

113-06-BZ
CEQR #BSA-096M

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Columbia University in the City of New York, lessee.

SUBJECT – Application June 6, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed 13-story academic building to be constructed on an existing university campus (Columbia University). The project requires lot coverage and height and setback waivers and is contrary to Z.R. Sections 24-11 and 24-522.

PREMISES AFFECTED – 3030 Broadway, Broadway, Amsterdam Avenue, West 116th and West 120th Streets, Block 1973, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: James Power.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 12, 2006, acting on Department of Buildings Application No. 104424650, reads, in pertinent part:

"Expansion of Science Studies Tower. Proposed lot coverage is exceeded, and is contrary to ZR 24-11. Proposed [street wall] height and setback is exceeded, and is contrary to ZR 24-522."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a portion of a site within an R8 zoning district, the proposed construction of a 229'-6" high, 14-story, 163,052 sq. ft. Use Group 3 building, serving as the science facility of Columbia University, which does not comply with applicable zoning requirements concerning lot coverage, front height, and setback, contrary to ZR §§ 24-11 and 24-522; and

WHEREAS, a public hearing was held on this application on August 22, 2006 after due notice by publication in the *City Record*, and then to decision on September 12, 2006; on this date the decision was deferred to September 19, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 9, Manhattan, states that it has no objections to the proposed variances, but indicated that it was not satisfied with the current architectural renderings of the proposed building (the "Building"); and

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WHEREAS, the Morningside Heights Historic District Committee 9"MHDC") and certain neighbors also appeared in opposition to this application; and

WHEREAS, the concerns of the Community Board, MHDC and the neighbors are discussed below; and

WHEREAS, this application was brought on behalf of Columbia University, a not for profit education institution; and

WHEREAS, the subject zoning lot is comprised of the large block bounded by Broadway, Amsterdam Avenue, and West 114th and 120th Streets; this block and an adjacent block serve as Columbia's primary campus; and

WHEREAS, the specific portion of lot to be developed is located at the northwest corner of Broadway and West 120th Street (the "Development Site"); and

WHEREAS, the applicant states that the northern portion of the Development Site is vacant to a depth of approximately 68 feet from West 120th Street, while the southern 146 ft. of the site is improved upon with a portion Columbia's gymnasium; and

WHEREAS, the Development Site is bounded to the east by Columbia's physics building, and the south by the chemistry building; the Building will be connected to these two buildings at various levels; and

WHEREAS, the Development Site, while part of a larger zoning lot, is considered a separate lot by the Department of Buildings for application of certain bulk requirements; and

WHEREAS, specifically, the Development Site is considered both a through lot (the portion located beyond 100 ft. of West 120th Street) and a corner lot (the remainder of the site); and

WHEREAS, the Building complies as to lot coverage for the through lot portion; and

WHEREAS, however, the Building is non-compliant as to lot coverage on the corner lot portion; the proposed coverage is 95% (75% is the maximum permitted); and

WHEREAS, additionally, while no variance is required for the overall height, no setbacks will be provided, except an 11'-6" setback at the first floor on West 120th Street (on wide streets such as Broadway and West 120th Street, a setback of 15 ft. is required at 85 ft. or nine stories, whichever is less); and

WHEREAS, the program of the Building is as follows: cellar and sub-cellar – mechanicals; floors two and three – cafeteria; floor four – library and entrance; floor five – classrooms and conference rooms; floor six and mezzanine – library, lecture room; floor seven through 13 – labs; and floor 14 – air handling and mechanicals; and

WHEREAS, a total of 28 labs would be provided (four on a floor), and twelve of these would connect to the physics and chemistry buildings; and

WHEREAS, each lab floor would have mezzanine levels, providing additional office, meeting, and work space; and

WHEREAS, the average floor plate size would be between 16,257 and 20,249 sq. ft.; and

WHEREAS, the floor to ceiling heights would be approximately 19 ft. high to accommodate needed mechanicals at each level, as well as tall scientific equipment and the

mezzanines; and

WHEREAS, the applicant argues that the waivers are necessary to create a building with floor plates and floor to floor heights that will meet the programmatic needs of Columbia; and

WHEREAS, the applicant states that Columbia does not currently have a world-class research facility similar to those of other large universities elsewhere in the country, and that one is needed in order to stay competitive; and

WHEREAS, the applicant cites to a 2005 programming study, in which consultants hired by Columbia concluded that 28 new laboratories were needed and that they should be arranged within the Building in a manner that would encourage interdisciplinary research and maximize interaction among the sciences as well as with the campus at large; and

WHEREAS, the study recommended that the labs be 2,000 to 3,500 sq. ft., that different disciplines be represented on each floor, that each floor have communal research and support facilities, as well as lecture halls, and that the Building be connected to other science buildings to the extent possible; and

WHEREAS, other identified needs include a new library devoted to science and engineering disciplines, and a cafeteria faculty, staff and students; and

WHEREAS, the applicant contends that a complying building would not meet the stated programmatic needs of Columbia; and

WHEREAS, the applicant notes that a complying building would rise to an overall height of 317'-6", and the northern wall would be 23'-3" from West 120th Street; and

WHEREAS, a complying building would have a 10 ft. setback above the sixth floor along Broadway, in order to comply with 40 percent tower requirements, as per ZR § 24-54; and

WHEREAS, the applicant states this would result in floor plates of 9,051 to 10,451 sq. ft. each on the upper floors, and labs would be reduced in size to 1,300 to 2,00 sq. ft.; and

WHEREAS, this would limit the flexibility and functionality of the labs, and certain science disciplines would not have sufficient space to conduct necessary research; and

WHEREAS, further, a complying building would not provide the same degree of integration with the adjacent physics and chemistry buildings, with only eight out of a proposed 26 labs having direct access; and

WHEREAS, the applicant also notes that certain features of the lower floors would be compromised by the limited footprint; specifically, the large lecture hall would be eliminated and replaced by two smaller ones, the entrance area would be smaller such that the escalators would be eliminated and replaced by a traditional stairwell core, and the cafeteria would be reduced in size; and

WHEREAS, the Board credits the applicant's statements as to Columbia's programmatic needs and the limitations of a complying building; and

WHEREAS, the Board also acknowledges that Columbia, as an educational institution, is entitled to significant deference under the case law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the

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subject variance application; and

WHEREAS, in addition to these programmatic needs, the applicant notes that the Development Site is compromised by its adjacency to existing buildings, which effectively constricts the area available for the Building's floor plates, when lot coverage and setback regulations are applied; and

WHEREAS, the applicant states that even above the height of the gymnasium, the existing buildings restrict the buildable area to 88 ft. in the east-west direction and 214 ft. in the north-south direction; and

WHEREAS, the applicant notes that if the existing buildings were not on the zoning lot, Columbia could easily design a building that would meet its programmatic needs and still comply with lot coverage and setback requirements; and

WHEREAS, based upon the above, the Board finds that the adjacency to the Development Site of the existing buildings constitutes a unique physical condition, which, when considered in conjunction with the programmatic need of Columbia to create a state of the art science facility, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since Columbia is a not-for-profit organization and the proposed development will be in furtherance of its educational mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the variances will allow a taller street wall (230 ft. as opposed to 85 ft.), but that this is consistent with the higher street wall context along Broadway and 120th Street; and

WHEREAS, the applicant also notes that the majority of buildings in the immediate area maintain facades at the street line without setback, including the chemistry and physics building, and other Columbia buildings; and

WHEREAS, the Board observes that the Building as proposed is more contextual with the surrounding built conditions than an as of right building, which would provide an 85 ft. street wall, set back, and then rise to a height of over 300 ft.; and

WHEREAS, the Board notes that Broadway is a wide avenue that can accommodate the additional street wall height without any significant impact on light and air to the street, as opposed to the impact that an as of right building would likely have; and

WHEREAS, as to total height, the applicant cites to buildings in the surrounding area that rise to heights that vary from 210 ft. to 237 ft.; and

WHEREAS, finally, the Board observes that any impact of the lot coverage waiver is mitigated by the provision of open space adjacent to the corner lot portion of the Development Site; and

WHEREAS, the applicant also notes that the submitted

Environmental Assessment Statement ("EAS") concludes that the proposed building will be compatible with the neighborhood and is not expected to create any adverse impacts; and

WHEREAS, the Board agrees that the requested waivers will not change the character of the neighborhood or impact adjacent uses; and

WHEREAS, the Board also notes that the building will serve a vital function to Columbia, an important educational institution within New York City; in this regard, the Board concludes that the variances will enhance public welfare rather than detract from it; and

WHEREAS, finally, the Board notes that the applicant submitted a letter from its design consultant, which establishes that the master plan for the Columbia campus contemplate a building at this location, with a footprint and a configuration similar, though not identical in all respects, to the proposal; and

WHEREAS, the design consultant also represents that the proposal is consistent with the master plan; and

WHEREAS, the MHDC contested these representations, and submitted a letter regarding them on September 11, 2006; and

WHEREAS, in a further letter dated September 15, 2006, the design consultant reiterates the above and suggests that the proposal is more in keeping with the building contemplated by the master plan than an as of right building; and

WHEREAS, in the same letter, the consultant also represents that the building contemplated in the master plan would require the same waivers as the proposed building; and

WHEREAS, the Board notes, however, that its determination that the instant application meets the finding set forth at ZR § 72-21(c) does not depend on a finding that there is absolute consistency between the master plan and the proposal; rather it is predicated on an assessment of the existing context of the neighborhood and the buildings immediately adjacent to the Development Site;

WHEREAS, in addition to MHDC's concerns, certain individuals expressed concern about the design of the building, alleging that façade was not contextual with the remainder of the Columbia campus; and

WHEREAS, the Board understands the concerns of the opposition in this regard, and notes that the applicant indicated it would continue to engage in a dialogue with the community about architectural design details; and

WHEREAS, however, the Board finds that such concerns do not relate to the requested waivers or application; and

WHEREAS, those opposed to this application also suggested that the street wall height be lowered and that an as of right building might be better, as it would be less bulky and view corridors from within the Columbia campus would be less likely to be blocked; and

WHEREAS, the applicant responds by noting that a lower building would not meet the programmatic needs of Columbia; and

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WHEREAS, the applicant also notes that the City's Landmarks Preservation Commission reviewed the EAS and determined that there is no effect on view corridors; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the existing buildings on the zoning lot and the programmatic needs of Columbia; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Building is designed to address Columbia's present programmatic needs; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA096M dated August 15, 2006 and in an EAS addendum for Historic Resources dated September 15, 2006; and

WHEREAS, the EAS and the subsequent addendum for historic resources documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a portion of a site within an R8 zoning district, the proposed construction of a 229'-6" high, 14-story, 163,052 sq. ft. Use Group 3 building, serving as the science facility of Columbia University, which does not comply with applicable zoning requirements concerning lot coverage, front height, and setback, contrary to ZR §§ 24-11 and 24-522; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application

marked "Received September 5, 2006"- twelve (12) sheets; and *on further condition*:

THAT lot coverage, height and setback shall be as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2006.

393-04-BZ

APPLICANT – Jeffrey Chester of Einbinder & Dunn, for Edythe Kurtzberg, owner; Lucille Roberts Health Clubs, Incorporated, lessee.

SUBJECT – Application December 16, 2006 – Variance pursuant to Z.R. §72-21 – Legalization of a physical culture establishment (Lucille Roberts) located within a C1-2 (R6B) Zoning district.

PREMISES AFFECTED – 41-19 Bell Boulevard, East side of Bell Boulevard, 75' north of 42nd Avenue. Block 6290, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 31, 2006, at 1:30 P.M., for postponed hearing.

290-05-BZ

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated 4/19/06 – Variance pursuant to Z.R. Section 72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 & 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for deferred decision.

60-06-A

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

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SUBJECT – Application April 5, 2006 – Request pursuant to Section 666 of the New York City Charter for a reversal of DOB's denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for deferred decision.

338-05-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application November 25, 2005 – Special Permit Z.R. §73-622 to permit the proposed enlargement of an existing single family home which creates non-compliances with respect to open space and floor area, Z.R. §23-141, less than the required side yards, Z.R. § 23-461 and less than the required rear yard, Z.R. §23-47.

PREMISES AFFECTED – 2224 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7374, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Robin Schan and Marilyn Schan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for decision, hearing closed.

16-06-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application January 27, 2006 – Special Permit Z.R. § 73-622 to permit the proposed enlargement of a one family home, which creates non-compliances with respect to open space and floor area (Z.R. § 23-141), side yards (Z.R. § 23-461) and rear yard (Z.R. § 23-47).

PREMISES AFFECTED – 2253 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7375, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for decision, hearing closed.

344-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Cornerstore Residence, LLC, owner.

SUBJECT – Application December 2, 2006 – Variance pursuant to Z.R. §72-21 to permit the construction of a two-family dwelling that does not permit one of the two front yards required for a corner lot. The premise is located in an R4 zoning district. The proposal requests a waiver of Z.R. Section 23-45 relating to the front yard.

PREMISES AFFECTED – 109-70 153rd Street, a/k/a 150-09 Brinkerhoff Avenue, northwest corner of 153rd Street and 110th Avenue, Block 12142, Lot 21, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for decision, hearing closed.

29-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Iliva Honovich, owner.

SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR § 72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards requirements; contrary to ZR §§ 23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district.
PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th Street and East 19th Street, Block 7463, Lots 47, 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Irvine Minkin, Iliva Honovich, Tracy Boanisler, Elya Gontwacher and Lenny Wolf.

ACTION OF THE BOARD – Laid over to October 24, 2006, at 1:30 P.M., for continued hearing.

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.

SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking. Parking for 12 vehicles in the cellar is proposed. The existing one-story

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structure consisting of approximately 2,600 SF will be demolished.

PREMISES AFFECTED – 2041 Flatbush Avenue, at the intersection of Flatbush Avenue and the eastern side of Baughman Place. Block 7868, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 31, 2006, at 1:30 P.M., for continued hearing.

56-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Suri Blatt and Steven Blatt, owner.

SUBJECT – Application March 27, 2006 – Pursuant to ZR §73-622 Special Permit for the enlargement of an existing one family residence which exceeds the maximum allowed floor area and decreases the minimum allowed open space as per ZR §23-141 and has less than the minimum required rear yard as per ZR §23-47.

PREMISES AFFECTED – 1060 East 24th Street, East 24th Street between Avenue J and Avenue K, Block 7606, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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October 6, 2006

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SATISH BABBAR, *Vice-Chair*

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Tuesday, September 26, 2006**

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112-06-BZ	507 East 176 th Street, Bronx
149-06-BZ	3701 14 th Avenue, Brooklyn

DOCKETS

New Case Filed Up to September 26, 2006

258-06-BZ

79-48 259th Street, Entire block bounded by Union Turnpike, 79th Avenue, 259th Street., Block 8695, Lot 1, 60, Borough of **Queens, Community Board: 13**. Under 72-21-To permit the proposed-story proposed new church sanctuary which would be built on a portinn edifice.

264-06-BZ

1632 East 28th Street, Between Avenue P and Quentin Road(approximately 150' south of Avenue P., Block 6790, Lot 11, Borough of **Brooklyn, Community Board: 15**. (SPECIAL PERMIT) 73-622-To allow the enlargement of a single family residence.

259-06-BZ

1885-1891 Ocean Parkway, Northeast corner of the intersection of Ocean Parkway and Avenue S., Block 6682, Lot 60, Borough of **Brooklyn, Community Board: 15**. Under-72-21-To allow the enlargement of an existing synagogue at the subject premises.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

260-06-BZ

547 Greenwich Street, aka 112 Charlton Street, southeast corner of Greenwich and Charlton Street, Block 597, Lot 45, Borough of **Manhattan, Community Board: 2**. Under - 73-36-Physical Culture Establishment.

261-06-BZ

87-99 Union Avenue, West side of Union Avenue, at the intersection of Harrison Avenue, Union Avenue and Lorimer Street., Block 2241, Lot 39, Borough of **Brooklyn, Community Board: 1**. Under 72-21-To permit the construction of a five-story Yeshiva.

262-06-BZ

71-13 60th Lane, Between 71st Avenue and Myrtle Avenue., Block 3538, Lot 67, Borough of **Queens, Community Board: 5**. Under 72-21-To allow residential conversions of vacant factory building.

263-06-BZ

2801-2805 Avenue L, Northeast corner of the intersection of East 28th Street and AvenueL., Block 7628, Lot 8, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622-To allow the enlargement of a single family residence.

CALENDAR

OCTOBER 31, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 31, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

363-04-BZ

APPLICANT – Mark A. Levine, Esq., for 6002 Fort Hamilton Parkway Partners, owners.

SUBJECT – Application June 27, 2006 – Amendment to reconfigure internal layout and minor changes to the structural façade. The premise is located in an M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, a/k/a 949-959 61st Street, a/k/a 940-966 60th Street, south of 61st Street, east of Fort Hamilton Parkway, Block 5715, Lots 21 & 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEALS CALENDAR

84-06-BZY

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR §11-331 for a four story mixed use building. Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

102-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marie & Louis Livan, lessees.

SUBJECT – Application May 23, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling located in the bed of a mapped street (Oceanside Avenue) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located in the bed of mapped street contrary to Section 35, Article 3 of General City Law.

PREMISES AFFECTED – 1 Arcadia Walk, intersection of Oceanside Avenue and Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

OCTOBER 31, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing,

Tuesday afternoon, October 31, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

67-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.

SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of Z.R. §22-00 and §36-21. The proposed number of parking spaces pursuant to a waiver of Z.R. §36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.

COMMUNITY BOARD #2SI

128-06-BZ

APPLICANT – Juan D. Reyes III, Esq., for Atlantic Walk, LLC, owner.

SUBJECT – Application June 16, 2006 – Zoning variance pursuant to ZR §72-21 to allow a nine-story residential building in an M1-5 district (Area B-2 of Special Tribeca Mixed Use District). Twenty Six (26) dwelling units and twenty six (26) parking spaces are proposed. The development would be contrary to use (Z.R. §111-104(d) and §42-10), height and setback (Z.R. §43-43), and floor area ratio regulations (Z.R. §111-104(d) and §43-12). The number of parking spaces exceeds the maximum allowed is contrary to Z.R. §13-12.

PREMISES AFFECTED – 415 Washington Street, west side of Washington Street, corner formed by Vestry Street and Washington Street, Block 218, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

159-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Shalom Kalnicki, owner.

SUBJECT – Application July 18, 2006 – Pursuant to ZR §72-21 for a variance to construct a single family home on a

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vacant lot which does not comply with the minimum lot width ZR §23-32 and less than the total required side yard, ZR §23-461. The premise is located in an R1-1 zoning district.

PREMISES AFFECTED – 4540 Palisade Avenue, east side of Palisade Avenue, 573’ from 246th Street, Block 5923, Lot 231, Borough of The Bronx.

COMMUNITY BOARD #8BX

226-06-BZ

APPLICANT – Eric Palatnik, P.C., for Bracha Weinstock, owner.

SUBJECT – Application September 5, 2006 – Pursuant to ZR §73-622 for the enlargement of a single family semi-detached residence. This application seeks to vary ZR §23-141(a) for open space and floor area; ZR §23-461(b) for less than the minimum side yard of 8 feet; ZR §23-47 for less than the minimum rear yard and ZR §23-631 for perimeter wall height. The premise is located in an R3-2(HS) zoning district.

PREMISES AFFECTED – 1766 East 28th Street, between Avenue R and Quentin Road, Block 6810, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

234-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Martin Gross and Batsheva Gross, owners.

SUBJECT – Application September 11, 2006 – Pursuant to ZR §73-622 for the enlargement of single family residence. This application seeks to vary ZR §23-141(a) for open space and floor area, ZR §23-47 for less than the minimum rear yard and ZR §23-461 for less than the minimum side yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1085 East 22nd Street, east side, between Avenue J and K, Block 7604, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #14BK

235-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Susan Rosenberg, owner.

SUBJECT – Application September 11, 2006 – Pursuant to ZR §73-622 for the enlargement of a single family residence. This application seeks to vary ZR §23-141 for open space and floor area and ZR §23-47 for less than the minimum rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 3155 Bedford Avenue, east side of Bedford Avenue, between Avenue J and Avenue K, Block 7607, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 26, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Collins.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, July 18, 2006 as printed in the bulletin of July 27, 2006, Vol. 91, No. 29. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

341-43-BZ

APPLICANT – Martyn & Don Weston, for 3319 Holding Corp., owner.

SUBJECT – Application June 8, 2006 – Extension of Term/Amendment filed pursuant to Z.R. §11-411 and §11-412, to permit the continuance of a storage warehouse (UG 16) in a C8-2 and R5 zoning district for an additional 10 years. The application also seeks an amendment for the removal of an internal partition and the change from a chain link enclosure to a masonry enclosure of the accessory parking area.

PREMISES AFFECTED – 3319 Atlantic Avenue, northeast corner Euclid Avenue, Block 4145, Lots 1, 13, 23, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a reopening, an extension of term, and an amendment to a previously granted variance; and

WHEREAS, a public hearing was held on this application on September 12, 2006 after due notice by publication in *The City Record*, and then to decision on September 26, 2006; and

WHEREAS, the site is located on the northeast corner of Atlantic Avenue and Euclid Avenue, and is comprised of three tax lots (Lots 1, 13, and 23); and

WHEREAS, the site is located partially within a C8-2 zoning district and partially within an R5 zoning district, and is improved upon with one two-story and two one-story buildings, all used for the storage of office records; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 4, 1944 when, under the subject

calendar number, the Board granted a variance for the maintenance and enlargement of an existing laundry establishment; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, the most recent amendment involved a change of use from a laundry establishment (UG 16) to a storage warehouse (UG 16), and was granted by the Board on June 4, 1996; and

WHEREAS, this grant also included the elimination of another tax lot (Lot 123) from the zoning lot (Lot 123 was part of zoning lot when the original grant was made in 1944); and

WHEREAS, additionally, the grant was extended for a term of ten years, to expire on June 4, 2006; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to Z.R. §11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, additionally, the applicant requests approval of proposed modifications to the approved plans; and

WHEREAS, specifically, the applicant proposes to remove a partition on the second floor and to replace the chain link fence around the accessory parking area with masonry; and

WHEREAS, pursuant to Z.R. §11-412, the Board may permit these types of alterations to buildings and sites subject to a previously granted variance; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens, and amends* the resolution, as adopted on January 4, 1944, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 4, 2006, to expire on June 4, 2016 and to permit modifications to the previously approved plans *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘June 8, 2006’-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 4, 2016;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 302172823)

Adopted by the Board of Standards and Appeals,

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September 26, 2006.

595-44-BZ, Vol. II

APPLICANT – Law Office of Howard Goldman, for Cinzia 30 CPS, Inc.

SUBJECT – Application July 7, 2006 – Pursuant to ZR §11-413 to permit the change of use on the entire 15th floor (Penthouse) from UG12 Restaurant to a UG6 Office Space. Floors one thru fourteen are a UG6 non-resident doctors' offices. The premise is located in R-10H zoning district.

PREMISES AFFECTED – 30 Central Park South, south side of street, 320' east of Avenue of the Americas, Block 1274, Lot 1055, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Emily Simons.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance to permit a change in use from restaurant (UG 12) to office space (UG 6); and

WHEREAS, a public hearing was held on this application on September 12, 2006, after due notice by publication in *The City Record*, and then to decision on September 26, 2006; and

WHEREAS, the site is located on the south side of Central Park South, 320 feet east of Avenue of the Americas and is within an R10H zoning district; and

WHEREAS, the zoning lot is improved with a 15-story commercial building and is within an R10H zoning district; and

WHEREAS, on July 15, 1955, the Board granted a variance under the subject calendar number to permit, within what was then a general residence district, the first 14 floors of the building to be used for doctors' offices; and

WHEREAS, this same grant allowed the 15th floor to be occupied by a restaurant, for a term of 20 years; and

WHEREAS, the term of the grant was extended multiple times, most recently on December 6, 2005, to expire on July 12, 2015; and

WHEREAS, at that time, the grant was amended to reflect certain layout modifications; and

WHEREAS, on June 1, 2004, the former owner of the 15th floor condominium unit proposed to change the use to residential use; and

WHEREAS, on July 26, 2004, at said owner's request, the Board provided a letter of no objection to DOB indicating that it did not object to the proposed use change, subject to DOB approval; and

WHEREAS, the Board notes that the conversion of the 15th floor to residential use was never effected; and

WHEREAS, the applicant, on behalf of a new owner, now proposes to convert the 15th floor restaurant into office space; and

WHEREAS, the applicant states that the restaurant has ceased operations and the 15th floor is vacant; and

WHEREAS, at hearing, the Board inquired about the use of an interior staircase between the 14th and 15th floors; and

WHEREAS, the applicant responded that the staircase was not actively used, was not used as a required means of egress, and would be closed off; and

WHEREAS, pursuant to ZR § 11-413, the Board may permit a change in use for a previously granted variance from Use Group 12 to Use Group 6; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds that the requested change in use is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on July 15, 1955, so that as amended this portion of the resolution shall read: "to permit a change in use from restaurant (UG 12) to office (UG 6) on the 15th floor of the existing building, *on condition* that all work shall substantially conform to drawings filed with this application and marked 'July 7, 2006'-(1)sheet; and *on further condition*:

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect to the extent relevant;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application. No. 104458506)

Adopted by the Board of Standards and Appeals, September 26, 2006.

558-51-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application April 19, 2006 – pursuant to ZR §11-411 to extend the term of a Automotive Service Station expiring December 21, 2006. The application does not seek any physical changes from the previous approval.

PREMISES AFFECTED – 68-22 Northern Boulevard, southwest corner of Northern Boulevard and 69th Street, Block 1186, Lot 19, Borough of Queens.

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COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, and, pursuant to ZR § 11-411, an extension of term of a prior grant for a gasoline service station, which expires on December 21, 2006; and

WHEREAS, a public hearing was held on this application on September 12, 2006, after due notice by publication in *The City Record*, and then to decision on September 26, 2006; and

WHEREAS, Community Board 3, Queens, recommends approval of this application provided all conditions of the prior grant are complied with; and

WHEREAS, the subject 10,000 sq. ft lot is located on the southwest corner of Northern Boulevard and 69th Street; and

WHEREAS, the site is located within an C2-2(R5) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 5, 1952 when, under the subject calendar number, the Board granted an application to permit the construction and maintenance of a gasoline service station with accessory uses and parking for cars awaiting service for a term of 15 years; and

WHEREAS, subsequently, the term has been extended and the grant amended by the Board at various times; the most recent extension was on January 13, 1998, for a term of ten years from the expiration of the prior grant, expiring on December 21, 2006; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on February 5, 1952, as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on December 21, 2016, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received September 18, 2006’–(6) sheets, and *on further condition*:

THAT the term of this grant shall be for ten years from the expiration of the prior grant, to expire on December 21, 2016;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 402307598)

Adopted by the Board of Standards and Appeals, September 26, 2006.

670-83-BZ

APPLICANT – Eric Palatnik, P.C., for Brett Adams and Paul Reisch, owner.

SUBJECT – Application July 10, 2006 – Pursuant to ZR §72-01 and §72-22 to Re-open and Amend the previous BSA resolution for the Extension of Term for a non-conforming UG6 (Talent Agency in the basement of a Residential Building for ten years which expired on May 22, 2005. The application is also seeking a Waiver of the Rules of Practice and Procedure for filing more than a year after the expiration of the term. The premise is located in an R8 (Special Clinton District) zoning district.

PREMISES AFFECTED – 488 West 44th Street, Between 9th and 10th Avenues, Block 1053, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of the term for a previously granted variance, which expired on May 22, 2005; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City Record*, and then to decision on September 26, 2006; and

WHEREAS, the premises is located on the south side of West 44th Street, between Ninth and Tenth Avenues; and

WHEREAS, the site is located within an R8 zoning district in the Special Clinton District and is improved upon with a three-story and basement residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 22, 1984 when, under the subject

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calendar number, the Board granted a variance to permit the legalization of the basement level for use as a commercial office; and

WHEREAS, subsequently, on June 20, 1995, the Board extended the term of the variance for a period of ten years, to expire on May 22, 2005; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed extension of term, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on May 22, 1984, as subsequently extended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from May 22, 2005, to expire on May 22, 2015, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'September 16, 2006'-(3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on May 22, 2015;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 104102007)

Adopted by the Board of Standards and Appeals, September 26, 2006.

182-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2465 Broadway Associates, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar, first and second floors of a commercial building. This is a companion case to 183-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2465/73 Broadway, west Broadway, 50' south of intersection with 92nd Street, Block 1239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of the term of a previously granted special permit for a physical culture establishment (PCE), which expired on November 1, 2005; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in *The City Record*, with continued hearings on August 15, 2006 and September 12, 2006, and then to decision on September 26, 2006; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of Broadway, 50 feet south of the intersection with 92nd Street; and

WHEREAS, the site is occupied by a two-story with cellar commercial building, located within a split C4-6A/R8 zoning district; and

WHEREAS, the portion of the building occupied by the PCE is within the C4-6A zoning district; and

WHEREAS, on March 18, 1997, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the legalization of a PCE within portions of the first floor, mezzanine, and cellar level of a three-story building;

WHEREAS, the grant expired on November 1, 2005; and

WHEREAS, on September 26, 2000, the grant was amended to legalize an expansion onto the second floor; and

WHEREAS, as approved, the PCE occupies 14,259 sq. ft. of zoning floor area on the first floor, first floor mezzanine, and second floor of the subject building, with an additional 9,921 sq. ft. in the cellar, and 3,469 sq. ft. in the cellar of the adjoining building at 2473 Broadway; and

WHEREAS, the portion of the PCE at 2473 Broadway was approved under BSA Cal. No. 183-95-BZ; an application for an extension of term of this grant was brought concurrently with this application; and

WHEREAS, the PCE is operated as an Equinox Fitness; and

WHEREAS, the applicant states that since the time of the original grant the ownership of Equinox Fitness has changed; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the applicant seeks to extend the term of the special permit for ten years; and

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WHEREAS, at hearing, the Board expressed concern about fire safety and egress; and

WHEREAS, specifically, the Board was concerned about the elevator's location within the staircase enclosure; and

WHEREAS, the applicant responded that no changes to the plans have been made since the PCE obtained its certificate of occupancy; and

WHEREAS, the Board noted that the stairs and elevator shall be as approved by DOB; and

WHEREAS, accordingly, the Board finds that the proposed ten-year extension of term is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated March 18, 1997, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received September 6, 2006"--(5) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from November 1, 2005, expiring November 1, 2015;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review and verify the BSA-approved plans, including the location of stairs and elevators, prior to issuing a new certificate of occupancy;

THAT DOB shall review the BSA-approved plans for Local Law 58/87 and applicable egress requirement compliance;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 100795917)

Adopted by the Board of Standards and Appeals, September 26, 2006.

183-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Haymes Broadway, LLC, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar of a commercial building. This is a companion case to

182-95-BZ. The special permit expired on October 1, 2005. PREMISES AFFECTED – 2473/5 Broadway, southwest corner of Broadway, and West 92nd Street, Block 1239, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of the term of a previously granted special permit for a physical culture establishment (PCE), which expired on November 1, 2005; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in *The City Record*, with continued hearings on August 15, 2006 and September 12, 2006, and then to decision on September 26, 2006; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located at the southwest corner of Broadway and 92nd Street; and

WHEREAS, the site is occupied by a two-story with cellar commercial building, located within a split C4-6A/R8 zoning district; and

WHEREAS, the portion of the building occupied by the PCE is within the C4-6A zoning district; and

WHEREAS, on March 18, 1997, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the legalization of a PCE within the cellar of a two-story building; and

WHEREAS, the grant expired on November 1, 2005; and

WHEREAS, as approved, the PCE occupies 3,469 sq. ft. in the cellar of the subject building and 14,259 sq. ft. of zoning floor area on the first floor, first floor mezzanine, and second floor and 9,921 sq. ft. in the cellar of the of the adjoining building at 2465 Broadway; and

WHEREAS, the PCE at 2465 Broadway was approved under BSA Cal. No. 182-95-BZ; an application for an extension of term of this grant was brought concurrently with this application; and

WHEREAS, the PCE is operated as an Equinox Fitness; and

WHEREAS, the applicant states that since the time of the original grant the ownership of Equinox Fitness has changed; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be

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satisfactory; and

WHEREAS, the applicant seeks to extend the term of the special permit for ten years; and

WHEREAS, at hearing, the Board expressed concern about fire safety and egress; and

WHEREAS, specifically, the Board was concerned about the elevator's location within the staircase enclosure of the adjoining building; and

WHEREAS, the applicant responded that no changes to the plans have been made since the PCE obtained its certificate of occupancy; and

WHEREAS, the Board noted that the stairs and elevator shall be as approved by DOB; and

WHEREAS, accordingly, the Board finds that the proposed ten-year extension of term is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated March 18, 1997, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received September 6, 2006"--(5) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from November 1, 2005, expiring November 1, 2015;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review and verify the BSA-approved plans, including the location of stairs and elevators, prior to issuing a new certificate of occupancy;

THAT DOB shall review the BSA-approved plans for Local Law 58/87 and applicable egress requirement compliance;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 100795917)

Adopted by the Board of Standards and Appeals, September 26, 2006.

933-28-BZ, Vol. II

APPLICANT – Michael M. Robbins, R.A., A.I.A., P.C., for Roger Budhu, owner.

SUBJECT – Application September 12, 2005 – Pursuant to ZR 11-411 for the extension of term/waiver of an automotive service station with auto repairs which expired on October 29, 2004, and an amendment to legalize a portion of the building to an accessory convenience store. The premise is located in an R-5 zoning district.

PREMISES AFFECTED – 125-24 Metropolitan Avenue, southwest corner of 126th Street, Metropolitan Avenue. Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Michael M. Robbins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for decision, hearing closed.

802-48-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Sheldon Rodbell 1993 Trust #2, owner; Beach Channel Island Drive, lessee.

SUBJECT – Application November 2, 2005 – Pursuant to ZR § 11-411 for the Extension of Term of a UG16 gasoline service station with automotive repair for a term of ten years, to expire in June 24, 2015. This application also purposes to legalize the conversion of two service bays to an accessory convenience store, maintain one service bay for minor auto repairs and the continuation of gasoline service sales. The premise is located in an R5 zoning district.

PREMISES AFFECTED – 13-46 Beach Channel Dr., a/k/a 2118 Dix Place, Northeast corner of Beach Channel Drive and Dix Place, Block 15527, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

229-84-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, for High Definition Realty LLC, owner. Bally Total Fitness Corporation, lessee.

SUBJECT – Application June 30, 2006 – Extension of Term/Waiver for a previously approved Physical Culture Establishment, located in an M1-1 zoning district, which was granted under section 73-36 of the zoning resolution and expired on November 27, 2004.

PREMISES AFFECTED – 75-28 Queens Boulevard, southside between Kneeland and Jacobus Streets. Block

MINUTES

2450, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Barbara Hair.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

144-89-BZ, Vol. III

APPLICANT – Law Office of Howard Goldman, LLP, for 93rd Street Associates LLC, owner.

SUBJECT – This application is to reopen and to Extend the Time to Complete Construction on a 10 story residential building with retail on the ground floor which expired on December 15, 2003 and a Waiver of the Rules of Practice and Procedure. The premise is located in a C2-8(TA) zoning district.

PREMISES AFFECTED – 1800 Second Avenue, between 93rd and 94th Street, Block 1556, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Chris Wrights.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for George Marinello, owner; Wendy’s Restaurant, lessee.

SUBJECT – Application January 12, 2006 – Pursuant to Z.R. §§72-21 and 72-22 for the extension of term for ten years for an accessory drive thru facility at an eating and drinking establishment (Wendy’s) which one-year term expired February 1, 2006. An amendment is also proposed to extend the hours of operation of the accessory drive-thru facility to operate until 4 a.m. daily. The premise is located in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, between 91st Street and Remsen Avenue, Block 8108, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD#17BK

APPEARANCES –

For Applicant: Eric Palatnik & Esme Trotman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October

17, 2006, at 10 A.M., for decision, hearing closed.

112-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Doris Laufer, owner.

SUBJECT – Application May 15, 2006 – Pursuant to ZR §72-01 and §72-21 for an Extension of Time to obtain a Certificate of Occupancy which expired on November 20, 2003 for a Community Use Facility-Use Group 4 (Congregation Noam Emimelech) and an Amendment that seeks to modify the previously approved plans for floor area/FAR – ZR §24-11, front wall height-ZR §24-521, front yard-ZR §24-31, side yard-24-35, lot coverage-ZR §24-11 and ZR §23-141(b) and off-street parking requirement for dwelling units-ZR §25-22.

PREMISES AFFECTED – 102 & 1406 59th Street, Block 5713, Lots 8 &10, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

61-06-A

APPLICANT – Miro C. Stracar, P.E., for Breezy Point Cooperative, Inc., owner; Mrs. Allie Hagen, lessee.

SUBJECT – Application April 5, 2006 – Proposed reconstruction and enlargement of an existing one family home located within the bed of a mapped street which is contrary to General City Law Section 35. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 152 Ocean Avenue, westerly side of Ocean Avenue, Block 16350, Lot 500, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

MINUTES

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 3, 2006, acting on Department of Buildings Application No. 402154360, reads, in pertinent part:

“1. Proposal to rebuild and enlarge the existing first floor and add a new second floor on a home which lies within the bed of a mapped street, which is contrary to Section 35, Article 3 of the General City Law.”; and

WHEREAS, a public hearing was held on this application on September 26, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated April 13, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated May 3, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated July 24, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 3, 2006, acting on Department of Buildings Application No. 402154360 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 21, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 26, 2006.

92-06-A

APPLICANT – Vito J. Fossella, P.E., for Norris Heath, owner.

SUBJECT – Application May 9, 2006 – Proposed construction of a two story/two family detached not fronting on a mapped street contrary to General City Law Section 36. Premises is located within R3A Zoning District.

PREMISES AFFECTED – 5 Lockman Place, Block 1236, Lot 122 (tentative), Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Sameh M. El-Menrawy.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 2, 2006, acting on Department of Buildings Application No. 500830121, reads, in pertinent part:

“The street giving access to proposed building is not placed duly on the official map of the City of New York, therefore:

- A) No Certificate of occupancy can be issued pursuant to Article 3, Section 36 of the General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building’s fronting directly upon a legally mapped street or frontage space contrary to Section 27-291 of the NYC Building Code.”; and

WHEREAS, a public hearing was held on this application on September 26, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated September 25, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated May 2, 2006, acting on Department of Buildings Application No. 500830121 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 23, 2006”-(1)sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

MINUTES

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 26, 2006.

286-05-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Ezra G. Levin, owner.

SUBJECT – Application September 14, 2006 – Proposed reconstruction and alteration of an existing building located in the bed of a mapped street (Sycamore Avenue) is contrary to General City Law Section 35. Premises is located within the R1-2 Zoning District.

PREMISES AFFECTED – 5260 Sycamore Avenue, east side of Sycamore between West 252nd Street and West 254th Street, Block 5939, Lot 380, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: James Power and Page Cowley.

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for continued hearing.

332-05-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for LMC Custom Homes, owner.

SUBJECT – Application November 17, 2005 – Application to permit the construction of two one-family dwellings within the bed of a mapped street (Enfield Place). Contrary to General City Law Section 35. Premises is located in an R4 Zoning district.

PREMISES AFFECTED – 72 Summit Avenue, Block 951, Lot p/o 19 (tent 25 and 27), Borough of Staten Island

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

333-05-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for LMC Custom Homes, owner.

SUBJECT – Application November 17, 2005 – Application to permit the construction of two one family dwellings within the bed of a mapped street (Enfield Place). Contrary to General City Law Section 35. Premises is located in an R4

Zoning district.

PREMISES AFFECTED – 74 Summit Avenue, Block 951, Lot p/o 19 (tent 25 & 27), Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

63-06-A

APPLICANT – Sheldon Lobel, P.C.,

OWNERS: Kevin and Alix O’Mara

SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jay Segal, Barnett Brimberg, Michael Cronin and Brian Cook.

For Opposition: Margerie Perlmutter

For Administration: Felicia Miller, Department of Buildings, and BC Eugene Carty, Fire Department.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for continued hearing.

81-06-A

APPLICANT – Whitney Schmidt, Esq.

OWNERS: Kevin and Alix O’Mara

SUBJECT – Application May 2, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jay Segal, Barnett Brimberg, Michael Cronin and Brian Cook.

For Opposition: Margerie Perlmutter

For Administration: Felicia Miller, Department of Buildings,

MINUTES

and BC Eugene Carty, Fire Department.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for continued hearing.

85-06-BZY

APPLICANT – Sanford Solny, for Menachem Realty, Inc., owner.

SUBJECT – Application May 5, 2006 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a mixed use building under the prior R6 zoning district. New zoning district is R4-1.

PREMISES AFFECTED – 1623 Avenue “P”, northwest corner of Avenue “P” and East 17th Street, Block 6763, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and Sanford Solny.

For Opposition: Sidney Stern, Bernard Weill, Bessie Triandafelos and other.

For Administration: Narisa Sasitorn, Department of Buildings.

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for continued hearing.

120-06-A

APPLICANT – Eric Palatnik, P.C., for Harry & Brigitte Schalchter, owners.

SUBJECT – Application June 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Current zoning district is R4-1

PREMISES AFFECTED – 1427 East 17th Street, between Avenue N and Avenue O, Block 6755, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

164-06-A

APPLICANT – Cozen O’Connor Attorneys, for Elba and Jeanette Bozzo, owners.

SUBJECT – Application July 26, 2006 – Appeal filed to challenging the Order of Closure issued by the Department of Buildings on June 30, 2006 pursuant to Administrative Code

Section 26-127.2 regarding the use of the basement, first, second and third floor of the subject premises which constitutes an illegal commercial use in a residential district. PREMISES AFFECTED – 148 East 63rd Street, south side of East 63rd Street, 120’ east of Park Avenue, Block 1397, Lot 48, Borough of Manhattan

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING

TUESDAY AFTERNOON, SEPTEMBER 26, 2006

1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar and Commissioner Collins.

ZONING CALENDAR

334-04-BZ

APPLICANT – Sheldon Lobel, P.C., for L & L Realty, owner. Great Roosevelt Plaza Corporation, lessee.

SUBJECT – Application October 8, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a seven-story mixed-use building containing retail, general office and community facility space. No parking will be provided. The site is currently occupied by two commercial buildings which will be demolished as part loading of the proposed action. The site is located is located in a C4-2 zoning district. The proposal is contrary to Z.R. §36-21 (Required parking), §36-62 (Required loading berth), and §33-432 (Sky exposure plane and setback requirements).

PREMISES AFFECTED – 135-28 Roosevelt Avenue, Roosevelt Avenue between Prince Street and Main Street. Block 5036, Lots 26(fka 25/26), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

MINUTES

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

Adopted by the Board of Standards and Appeals, September 26, 2006.

290-02-BZ thru 314-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner. (Tapei Court)

SUBJECT – Application October 24, 2002 – under Z.R. §72-21 – to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district’s equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners’ association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-01/03/05/07/09/11/13/17/19/15/21/21/23/25/27/29/31/33/35/20/22/24/26/28/30/32/34 Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug, Ed Hogan and Tommy Theodore.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for decision, hearing closed.

165-05-BZ

APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.

SUBJECT – Application July 25, 2005 – Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.

PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156’-3” East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jeffrey A. Chester and Alberto Degos Rios.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 1:30 P.M., for decision, hearing closed.

288-05-BZ

APPLICANT – Harold Weinberg, P.E., for Maria Musacchio, owner.

SUBJECT – Application September 16, 2005 – Pursuant to ZR §73-622 Special Permit for an In-Part Legalization to a single family home which exceeds the allowable floor area ratio and is less than the allowable open space, 23-141 and exceeds the maximum allowable permierter wall height, 23-631. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 1060 82nd Street, South side, 197’3” west of 11th Avenue, between 10th Avenue, Block 6012, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Harold Weinberg, Philip Musacchio and Philip Musacchio..

For Opposition: Adriano Santini, Violet Santini and Thomas A. Delorazzo.

ACTION OF THE BOARD – Laid over to October 24, 2006, at 1:30 P.M., for continued hearing.

290-05-BZ

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated 4/19/06 – Variance pursuant to Z.R. Section 72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 & 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95’ east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 1:30 P.M., for decision, hearing closed.

60-06-A

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim

MINUTES

Viznitz, owner.

SUBJECT – Application April 5, 2006 – Request pursuant to Section 666 of the New York City Charter for a reversal of DOB's denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 1:30 P.M., for decision, hearing closed.

291-05-BZ

APPLICANT – Eric Palatnik, P.C. for Rallaele DelliGatti, owner.

SUBJECT – Application September 22, 2005 – Pursuant to ZR 72-21 for a Variance to allow for the demolition of an existing single family residence and its re-development with a new single family residence which has less than the required front yard, ZR 23-45. The premise is located in an R-2A zoning district.

PREMISES AFFECTED - 10-33 Burton Street, Burton Street between 12th Avenue and 12th Road, Block 4607, Lot 26, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for decision, hearing closed.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.

SUBJECT – Application December 22, 2005 – Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling containing thirty (30) dwelling units in an R3-2 (HS) Zoning

District; contrary to Z.R. §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: MaryAnn McGowan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for decision, hearing closed.

50-06-BZ

APPLICANT – Jeffrey A. Chester, Esq., for 461 Carol Street, LLC, owner.

SUBJECT – Application March 20, 2006 – Use Variance pursuant to Z.R. §72-21 to permit the conversion and expansion of a commercial/industrial building to a two-family residence. The premise is located in a M1-2 zoning district. The waiver requested relates to the use regulations pursuant to Z.R. §42-00. The subject site was previously used by Linda Tool Co., a custom tool and dye manufacturer which occupied the premises for several decades.

PREMISES AFFECTED – 461 Carroll Street, between Nevins Street and Third Avenue, Block 447, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jeffrey Chester and Kim Ackert.

ACTION OF THE BOARD – Laid over to October 31, 2006, at 1:30 P.M., for continued hearing.

58-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rose Weinstein, owner.

SUBJECT – Application March 31, 2006 – Zoning variance under §72-21 to allow retail use (U.G. 6) to be located on the first floor and cellar level of an existing building in an M1-5B district; contrary to §42-10.

PREMISES AFFECTED – 499 Broadway, 100' north of Broome Street, Block 484, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel and Brett Kearney.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 1:30 P.M., for decision, hearing closed.

MINUTES

Negative:.....0
ACTION OF THE BOARD – Laid over to October
17, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

112-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Audubon Housing Dev. Fund Corp., owner.

SUBJECT – Application June 5, 2006 – Variance application pursuant to Z.R. §72-21 to permit the construction of a seven-story and cellar residential and commercial building with accessory supportive social services. The accessory supporting social services programs and commercial component will be located on the first floor. The residential component will be located on floors 1 through 7. The premises is located in an M1-4 zoning district. The site was most recently used for automobile sales and storage. The proposal seeks to vary, based on the nearby R7-1 zoning district, Z.R. §23-142 (Residential Floor Area), §24-111 (Total Floor Area), §23-142 (Open Space), 23-22 (Number of Dwelling Units), and §23-632 (for Wall Heights, Total Height, Setbacks, Sky Exposure Plane, and Number of Parking Spaces).

PREMISES AFFECTED – 507 East 176th Street, northwest corner of Third Avenue and 176th Street, Block 2924, Lots 38, 39, 42, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to October
17, 2006, at 1:30 P.M., for decision, hearing closed.

149-06-BZ

APPLICANT – Sheldon Lobel, P.C., for NYC Department of Citywide Administrative Services, owner; Boro Park Volunteers of Hatzolah, Inc., lessee.

SUBJECT – Application July 7, 2006 – Variance pursuant to Z.R. §72-21 to permit the development of the site to accommodate a not-for-profit ambulance/emergency vehicle garage, dispatch, and training facility. The premise is located in an M2-1 zoning district. The proposal is request variance waivers relating to floor area (Z.R. §43-12) and the number of parking spaces (Z.R. §44-21).

PREMISES AFFECTED – 3701 14th Avenue, southwest corner of the intersection formed by 14th Avenue and 37th Street, Block 5348, Lot 9 (portion), Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Sheldon Lobel, Larry Morrish, Douglas Jablon, Elliot Rosman, Bernie Gips, Simcha Felder, Sister Barbara Mullen and Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 91, Nos. 39-40

October 26, 2006

DIRECTORY

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SATISH BABBAR, *Vice-Chair*

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DOCKETS

**MINUTES of Regular Meetings,
Tuesday, October 17, 2006**

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802-48-BZ	13-46 Beach Channel Drive, Queens
167-55-BZ	20-65 Clintonville Street, Queens
229-84-BZ	75-28 Queens Boulevard, Queensf
144-89-BZ	1800 Second Avenue, Manhattan
171-95-BZ	100 East End Avenue, Manhattan
228-96-BZ	1209 Zerega Avenue, The Bronx
111-01-BZ	9001 Ditmas Avenue, Brooklyn
866-49-BZ	200-01/07 47 th Avenue, Queens
413-50-BZ	691/703 East 149 th Street, The Bronx
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174-05-A	60 Hudson Street, Manhattan
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290-02-BZ thru	
314-02-BZ	Tapei Court, Queens
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338-05-BZ	2224 East 14 th Street, Brooklyn
344-05-BZ	109-70 153 rd Street, Queens
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132-06-BZ	122-136 Greenwich Avenue, Manhattan
176-06-BZ	1253 East 28 th Street, Brooklyn

DOCKETS

New Case Filed Up to October 17, 2006

265-06-BZ

141-48 33rd Avenue, Located on the south side of 33rd Avenue between Parsons Boulevard and Union Street., Block 4981, Lot 37, Borough of **Queens, Community Board: 7**. Under 72-21-To permit multi-family residential accessory use on the R2 portion of a zoning lot split by district boundaries. Such access will permit the development of a community facility and multi-family residential building on the landlocked R6 portion

266-06-BZ

4 East 3rd Street, Situated on the south side of East 3rd Street, 0 feet east of the corner formed by the intersection of The Bowery and East 3rd Street., Block 458, Lot 6, Borough of **Manhattan, Community Board: 3**. (SPECIAL PERMIT) 73-52-To extend the C6-1 use and bulk regulations 25 feet into the adjacent R7-2 district and to apply the C6-1 use & bulk regulations to the additional 25 feet of the zoning lot.

267-06-BZ

148-29 Cross Island Parkway, Southeast corner of a block bounded by Cross Island Parkway to the south and southwest, 149th Street to the east 148th Street to the west and 12th Avenue to the north., Block 4486, Lot 34,35, Borough of **Queens, Community Board: 7**. Under 72-21-To permit a two-story professional office building.

268-06-BZ

80-35 Pitkin Avenue, Approximately 150 east of the intersection of Pitkin Avenue and 80th Street, Block 9141, Lot 20, Borough of **Queens, Community Board: 10**. (SPECIAL PERMIT) 73-30 and 22-21-For a non-accessory radio tower, which is a public utility wireless communications facility and will consist of an 80-foot stealth flagpole, together with antennas mounted therein and related equipment at the base thereof.

269-06-BZ

125 Greaves Lane, Between Timber Ridge Drive on the east and Greaves Lane on the west., Block 4645, Lot 425, Borough of **Staten Island, Community Board: 3**. Under 72-21-To convert 11,000 square feet of a vacant space.

270-06-A

148 East 63 Street, 120 feet from the south east corner of the Intersection of Lexington Avenue and East 63rd Street., Block 1397, Lot 48, Borough of **Manhattan, Community Board: 8**. Revocation of Permits/Certificate of Occupancy-For office (hotel doctor); office (hotel manger); two (2) furnished rooms; three (3) furnished rooms, at the base basement, 1st story , 2nd story & 3rd story, respectively.

271-06-BZY

1504 Richmond Road, South side Richmond Road; 71.72" northeast of Cromwell Avenue., Block 3229, Lot 1 (tent 5), Borough of **Staten Island, Community Board: 2**. Extension of Time/Certificate of Occupancy.

272-06-BZ

37-11 35th Avenue, 35th Avenue between 37th & 38th Streets., Block 645, Lot 1, Borough of **Queens, Community Board: 1**. (SPECIAL PERMIT) 73-36-To allow a physical culture establishment.

273-06-A

113 Beach 221st Street, Eastside Beach 221st Street 240' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of **Queens, Community Board: .** General City Law Section36, Article 3-Proposed enlargement of existing single family dwelling.

274-06-BZ

116-07 132nd Street, Vacant triangular lot with Lincoln Street to the east, 132nd to the west and 116 Avenue to the north., Block 11688, Lot 1, Borough of **Queens, Community Board: 10**. Under 72-21-To permit the construction of a two-story single family dwelling.

275-06-BZ

408-414 West 13th Street, An irregularly-shaped through lot with its northern lot line on the south side of West 13th Street, 124.16 feet west of the corner formed by the intersection of Ninth Avenue and West 13th Street., Block 645, Lot 33,35,51, Borough of **Manhattan, Community Board: 2**. Under 72-21-For rear yards to facilitate development of a M1-5 zoned commercial condominium building.

DOCKET

276-06-A

8 & 12 Reynolds Street, South side of Reynolds Street 100'
West of Saint Mary's Avenue., Block 2989, Lot 30,28,
Borough of **Staten Island, Community Board:** . Appeals-

277-06-A

27 Roosevelt Walk, East side Roosevelt Walk 193.04 south
of West End Avenue, Block 16350, Lot 400, Borough of
Queens, Community Board: 14. Appeal-

278-06-BZ

871 Bergen Street, Between Classon and Franklin Avenues,
Block 1142, Lot 92, Borough of **Brooklyn, Community
Board: 8.** Under 72-21-To allow the development of a 5
story residential project.

279-06-BZ

144-29 South Road, Corner formed by the southeast side of
South Road and Inwood Street., Block 10045, Lot 18,
Borough of **Queens, Community Board: 12.** Under 72-21-
To permit the construction of a two story family residence
on a corner lot.

**DESIGNATIONS: D-Department of Buildings; B.BK.-
Department of Buildings, Brooklyn; B.M.-Department of
Buildings, Manhattan; B.Q.-Department of Buildings,
Queens; B.S.I.-Department of Buildings, Staten Island;
B.BX.-Department of Building, The Bronx; H.D.-Health
Department; F.D.-Fire Department.**

CALENDAR

NOVEMBER 14, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 14, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

717-60-BZ

APPLICANT – Eric Palatnik, P.C., for Sun Refining & Marketing, owner.

SUBJECT – Application September 25, 2006 - Extension of term/waiver of the rules for a Variance (§72-21) for an existing (UG 16) gasoline service station (Sunoco) in an R3-2/C1-1 zoning district which expired on June 1, 2006. PREMISES AFFECTED – 2052 Victory Boulevard, southeast corner of Bradley Avenue, Block 724, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

466-89-BZ

APPLICANT – Eric Palatnik, P.C., for Frank R. Bell Funeral Home Inc., owner.

SUBJECT – Application September 7, 2006 - Amendment to a previously granted Variance (§72-21) for the enlargement of an existing funeral home (UG7) to allow the increase of 1,250 square feet to the existing structure in an R6 zoning district.

PREMISES AFFECTED – 526, 528 and 536 Sterling Place, aka 764 Classon Avenue, southwest corner of Sterling Place and Classon Avenue, Block 1174, Lots 32, 33, 35, Borough of Brooklyn.

COMMUNITY BOARD #8BK

70-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tenth City, LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 11, 2006 - Extension of Term of a Special Permit (73-36) to allow a Physical Culture Establishment (New York Sports Club) in a C6-6 & C1-4.5(MID) zoning district which expired on November 1, 2006 and an amendment to legalize the increase of 1,500 square feet on the second floor.

PREMISES AFFECTED – 576 Lexington Avenue, northeast corner of Lexington Avenue and East 51st Street, Block 1306, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #6M

330-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Katz, owner; Anthony Gaudio, lessee.

SUBJECT – Application May 25, 2006 - requesting an extension of term/waiver and an amendment of a Physical Cultural Establishment located within a C1-6A zoning district in the Special Transit Land Use District, commencing on February 16, 1995 and expiring on February 16, 2005. The amendment sought includes a change in operating control and proposed minor physical alterations to the establishment.

PREMISES AFFECTED – 242 East 14th Street, south side of 14th Street, Block 469, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

331-05-A

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Rock Development Corp., owner.

SUBJECT – Application November 17, 2005 - to permit the construction of the one family dwelling within the bed of mapped street, 153rd Place, contrary to General City Law Section 35. Premises is located in an R3-1 Zoning District. PREMISES AFFECTED – 15-59 Clintonville Street a/k/a 15-45 153rd Place, east side of Clintonville Street, bed of mapped 153rd Place, Block 4722, Lot (tentative 19), Borough of Queens.

COMMUNITY BOARD #7Q

182-06-A thru 211-06-A

APPLICANT – Stadtmauer Bailkin, LLP, for Beachfront Community, LLC, owner.

SUBJECT – Application August 22, 2006 -An appeals seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R5 Zoning district. Premises is located in an R4-A Zoning district. PREMISES AFFECTED – Beach 5th Street, Beach 6th Street and SeaGirt Avenue, bound of Seagrit Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west Reynolds Channel to the south, Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67 and 68; Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67 and 69 Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

NOVEMBER 14, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 14, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

159-05-BZ

APPLICANT– Vito J. Fossella, P.E., for Antonio Ciccotto, owner.

SUBJECT – Application July 7, 2006 - Variance under ZR §72-21 to allow a three (3) story mixed-use building containing residential use on the upper floors and retail use (UG 6) on the ground and cellar levels on a site zoned R3X and R3X/C2-1; contrary to ZR §22-00.

PREMISES AFFECTED – 880 Anadale Road, located on the west of the corner formed by the intersection of Annadale Road and South Railroad Avenue, Block 6249, Lot 436T, Borough of Staten Island.

COMMUNITY BOARD #3SI

359-05-BZ

APPLICANT– Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application December 15, 2006 - Special Permit under Z.R. § 73-211- to allow an existing gasoline service station with accessory convenience store in an R5/C2-2 zoning district.

PREMISES AFFECTED – 1927-1933 Flatbush Avenue, northeast corner of Flatbush Avenue and Kings Highway, Block 7819, Lots 20 & 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

130-06-BZ

APPLICANT – Anderson Kill & Olick, P.C., for Amsterdam Nursing Home Corp., owner.

SUBJECT – Application June 22, 2006 – Variance pursuant to Z.R. §72-21 to permit a one-story addition in the rear yard of an existing nursing home. The Premise is located in R8 and R8/C1-4 zoning districts. The proposal is contrary to Z.R. Section 24-33(b)(3).The rear yard proposed for the addition is currently vacant.

PREMISES AFFECTED – 1060 Amsterdam Avenue, West side of Amsterdam Avenue between 112th and 113th Streets, Block 1884, Lots 29, 36, Borough of Manhattan.

COMMUNITY BOARD #9M

252-06-BZ

APPLICANT – Randolph Croxton, for Mount Hope Community Center, owner.

SUBJECT – Application September 15, 2006 - Variance pursuant to Z.R. 72-21 to permit the construction of a four-story Use Group 4 community center facility. The Premises is located in an R8 zoning district and is currently a vacant lot. The proposal is seeking waivers of Z.R. 24-36 and 24-393 (proposed portion of the new building located in the rear yard is not a permitted obstruction per Z.R. 24-33 (b) paragraph (3)). A waiver of 24-382 is also requested relating to the proposed portion of the new building on a through lot exceeding 110 feet in depth which requires a rear yard equivalent.

PREMISES AFFECTED – 55 East 175th Street, between Townsend Avenue and Walton Avenues, Lot 2850, Lot 38, Borough of The Bronx.

COMMUNITY BOARD #5BX

258-06-BZ

APPLICANT– Anderson Kill & Olick, P.E., for Our Lady of the Snows Church, owner.

SUBJECT – Application September 20, 2006 – Variance pursuant to Z.R. 72-21 to permit the proposed one-story church sanctuary which would be built on a portion of the site currently occupied by a parking lot. The applicant proposes to move out of its existing sanctuary on the same site, which was originally built as a gymnasium/auditorium for the parochial school. The Premises is located in an R2 zoning district. The proposal is seeking waivers of Z.R. 24-111 and 23-141 with respect to the proposed one-story addition (additional floor area) exceeding the permitted community facility floor area in an R2 zoning district.

PREMISES AFFECTED – 79-48 259th Street, 258-15 80th Avenue, 79-33 258th Street, entire block bounded by Union Turnpike, 79th Avenue, 259th Street, 80th Avenue, 258th Street, Block 8695, Lots 1, 60, Borough of Queens.

COMMUNITY BOARD #13Q

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, OCTOBER 17, 2006 10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, July 25 & 26, 2006 as printed in the bulletin of August 4, 2006, Volume 91, No. 30. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

802-48-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Sheldon Rodbell 1993 Trust #2, owner; Beach Channel Island Drive, lessee.

SUBJECT – Application November 2, 2005 – Pursuant to ZR §11-411 for the Extension of Term of a UG16 gasoline service station with automotive repair for a term of ten years, to expire in June 24, 2015. This application also purposes to legalize the conversion of two service bays to an accessory convenience store, maintain one service bay for minor auto repairs and the continuation of gasoline service sales. The premise is located in an R5 zoning district.

PREMISES AFFECTED – 13-46 Beach Channel Dr., a/k/a 2118 Dix Place, Northeast corner of Beach Channel Drive and Dix Place, Block 15527, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of the previously granted variance, which permitted a gasoline service station and which expired on June 24, 2005, and an amendment to legalize an accessory convenience store; and

WHEREAS, a public hearing was held on this application on August 15, 2006, after due notice by publication in *The City Record*, with a continued hearing on September 26, 2006, and then to decision on October 17, 2006; and

WHEREAS, the site is located on the northeast corner of Beach Channel Drive and Dix Place; and

WHEREAS, the site is located within an R5 zoning district, and is improved upon with a gasoline service station;

and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 26, 1949 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing auto laundry to an automobile repair shop, on a site that also included an existing gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; it was most recently extended on November 14, 1995 for a term of ten years, to expire on June 24, 2005; and

WHEREAS, the applicant now seeks a ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, the Board notes that in January of 2001, DOB approved an application permitting an interior alteration of the building, which included the conversion of the repair shop to an accessory convenience store; and

WHEREAS, the applicant seeks to formalize the conversion of the repair shop to an accessory convenience store; and

WHEREAS, at hearing, the Board asked the applicant if the signage was compliant; and

WHEREAS, the applicant provided a sign analysis and photographs indicating that the signage was compliant; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, as adopted on April 26, 1949, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 24, 2005, to expire on June 24, 2015 and to permit an accessory convenience store *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘June 27, 2006’-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 24, 2015;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review all signage for compliance with C1-1 zoning district regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not

MINUTES

related to the relief granted.”
(DOB Application No. 400522555)

Adopted by the Board of Standards and Appeals, October 17, 2006.

167-55-BZ

APPLICANT – Vassalotti Associates Architects, for Gargano Family Patnership, owner; Joseph Brienza, lessee.

SUBJECT – Application April 25, 2006 – Pursuant to ZR§11-411 and ZR §11-412 to Reopen and Extend the Term of Variance/Waiver for a Gasoline Service Station (Gulf Station), with minor auto repairs which expired on October 7, 2005 and for an Amendment to permit the sale of used cars. The premise is located in R3-1 zoning district.

PREMISES AFFECTED – 20-65 Clintonville Street, north corner of the intersection of Clintonville Street and Willets Point Boulevard, Block 4752, Lot 1, Borough of Queens

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term, and an amendment to a previously granted variance, to permit the sale of used cars; and

WHEREAS, a public hearing was held on this application on September 19, 2006 after due notice by publication in *The City Record*, and then to decision on October 17, 2006; and

WHEREAS, Community Board, 7, Queens, recommends approval of this application on the condition that advertising signage be limited, the number of cars for sale be limited to four at one time, and that vehicles be contained within property lines; and

WHEREAS, the site is located on the north side of the corner formed by Clintonville Street, 21st Avenue, and Willets Point Boulevard; and

WHEREAS, the site is located partially within an R3-1 zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 7, 1958 when, under the subject calendar number, the Board granted a variance for the maintenance and construction of the gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on October 29, 1996, the grant was extended for a term of ten years, to expire on October 7,

2005; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, additionally, the applicant proposes to add the sale of used cars, limited to four at any time; and

WHEREAS, the applicant represents that there would not be any freestanding signs or banners associated with the sale of cars at the site; and

WHEREAS, at hearing the Board asked the applicant to modify the parking layout in order to improve traffic circulation; and

WHEREAS, the applicant submitted revised plans that indicate the removal of two parking spaces; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on October 7, 1958, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 7, 2005 to expire on October 7, 2015, to permit the sale of used cars at the site, and to permit modifications to the previously approved plans *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received April 25, 2006’-(1) sheet and ‘October 10, 2006’-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 7, 2015;

THAT the number of cars for sale shall be limited to four;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 402234079)

Adopted by the Board of Standards and Appeals, October 17, 2006.

229-84-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, for High

MINUTES

Definition Realty LLC, owner. Bally Total Fitness Corporation, lessee.

SUBJECT – Application June 30, 2006 – Extension of Term/Waiver for a previously approved Physical Culture Establishment, located in an M1-1 zoning district, which was granted under section 73-36 of the zoning resolution and expired on November 27, 2004.

PREMISES AFFECTED – 75-28 Queens Boulevard, southside between Kneeland and Jacobus Streets. Block 2450, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Barbara Hair.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on November 27, 2004; and

WHEREAS, a public hearing was held on this application on September 26, 2006, after due notice by publication in *The City Record*, and then to decision on October 17, 2006; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, the subject premises is located on the south side of Queens Boulevard, between Kneeland and Jacobus Streets; and

WHEREAS, the site is occupied by a one-story commercial building, located within an M1-1 zoning district; and

WHEREAS, the PCE is operated as a Bally's Fitness; and

WHEREAS, on November 27, 1984, the Board granted a special permit pursuant to ZR §73-36, to permit the operation of a PCE in the subject building; and

WHEREAS, on August 8, 1995, the Board granted a ten-year extension of term which expired on November 27, 2004; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the Board finds that a ten-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 27, 1984, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-

approved plans, and that all work and site conditions shall comply with drawings marked 'Received June 30, 2006'-(3) sheets; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from November 27, 2004, expiring November 27, 2014;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 402217640)

Adopted by the Board of Standards and Appeals, October 17, 2006.

144-89-BZ, Vol. III

APPLICANT – Law Office of Howard Goldman, LLP, for 93rd Street Associates LLC, owner.

SUBJECT - This application is to reopen and to Extend the Time to Complete Construction on a 10 story residential building with retail on the ground floor which expired on December 15, 2003 and a Waiver of the Rules of Practice and Procedure. The premise is located in a C2-8(TA) zoning district.

PREMISES AFFECTED – 1800 Second Avenue, between 93rd and 94th Street, Block 1556, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to permit modifications to the plans, and an extension of time to complete construction of an 11-story residential building with retail use on the first floor, which expired on December 15, 2003; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City*

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Record, to continued hearing on September 26, 2006, and then to decision on October 17, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the site is located in a C2-8A zoning district within the Special Transit Land Use District (TA); and

WHEREAS, the subject zoning lot is located on the southeast corner of Second Avenue and E. 93rd Street, with a depth of 75 feet and a width of 25 feet; and

WHEREAS, the zoning lot is currently vacant; and

WHEREAS, on August 14, 1990, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit in a C2-8 (TA) zoning district the construction of a ten-story residential building with ground floor retail space; and

WHEREAS, the initial proposal was for a ten-story building with an FAR of 9.75, 27 units, a height of 96 feet, and a bulkhead height of 110 feet; and

WHEREAS, one of the conditions of the grant was that substantial construction be completed in accordance with ZR § 72-23, which requires the completion of construction within the statutorily prescribed time set forth in that provision; and

WHEREAS, subsequently, on four occasions, the grant was amended, to allow for an extension of time to complete construction; and

WHEREAS, most recently, an extension was granted on March 6, 2001, to permit a three-year extension of term from December 15, 2000 to expire on December 15, 2003; and

WHEREAS, additionally, in 2002, in response to a request from the prior owner, the Board issued a letter of substantial compliance approving certain minor modifications to the approved plans; the revised proposal provided for a ten-story building with an FAR of 9.9, 27 units, a height of 96'-6", and a bulkhead height of 115 feet; and

WHEREAS, the applicant represents that the current owner purchased the site in 2005 before any work had commenced at the site; and

WHEREAS, the applicant represents that the current owner has a foundation permit and is prepared to commence work; and

WHEREAS, at hearing, the Board asked the applicant to provide documentation that funding has been secured for the development; and

WHEREAS, the applicant submitted details about the secured funding; and

WHEREAS, accordingly, the Board finds that it is appropriate to grant an extension of time to complete construction; and

WHEREAS, additionally, the applicant proposes to modify the plans to reflect a number of design changes including: 1) an increase in the overall height from 96'-6" to 114'-0"; 2) an increase in the bulkhead height from 115 feet to

132 feet; 3) an increase in floor-to-floor heights from 9'-5" to 10'-0"; 4) a reduction in the number of apartments from 27 to nine; and 5) the addition of an 11th floor; and

WHEREAS, specifically, the new plan proposes to set the building back at 103 feet, above the tenth floor and to offer one apartment per floor, with a duplex on the tenth and 11th floors; and

WHEREAS, the proposed FAR of 9.9 remains unchanged from the 2002 revision and is permitted by zoning district regulations; and

WHEREAS, the applicant represents that the new design complies with the requirements of the Quality Housing (QH) program and allows the building to offer modernized floor plans and services; and

WHEREAS, the Board notes that the waiver for lot area per room is no longer required due to a ZR text change; and

WHEREAS, further, the Board notes that the implementation of QH standards include: landscaping, increased dwelling unit size and the inclusion of double-glazed windows, individual laundry units, and recreation space on the roof; and

WHEREAS, because of the increase in height, the Board asked the applicant to provide information about the current character of the surrounding area; and

WHEREAS, the applicant provided a land use map and photographs of the surrounding area; and

WHEREAS, the Board has reviewed these materials and notes that buildings with significantly taller heights occupy the other three corners of the E. 93rd Street and Second Avenue intersection; and

WHEREAS, specifically, there are 17-story, 32-story, and 45-story buildings on the other corners and several buildings along Second Avenue that range in height from 20 to 40 stories; and

WHEREAS, accordingly, the Board finds that the proposed amendments are appropriate.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, said resolution having been adopted on August 14, 1990, so that as amended this portion of the resolution shall read: "to permit a four-year extension of time to complete substantial construction from the date of this grant, to expire on October 17, 2010, and to permit modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked 'Received October 2, 2006' - (8) sheets; and *on further condition*:

THAT the conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. (DOB Application No. 104446805)

Adopted by the Board of Standards and Appeals, October 17, 2006.

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171-95-BZ

APPLICANT – Law Office of Howard Goldman, LLC, for The Chapin School Limited, owner.

SUBJECT – Application July 21, 2006 – Pursuant to Z.R. §72-01 and §72-22 for an amendment to a not-for-profit all girls school (The Chapin School) for a three floor enlargement which increases the floor area and the height of the building. The premise is located in an R8B/R10A zoning district.

PREMISES AFFECTED – 100 East End Avenue, between 84th and 85th Streets, Block 1581, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Chris Wright

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, which permitted an enlargement of an existing six-story school; and

WHEREAS, a public hearing was held on this application on September 19, 2006, after due notice by publication in *The City Record*, and then to decision on October 17, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject zoning lot is located on the northwest corner of East End Avenue and E. 84th Street with 223'-0" of frontage on East End Avenue and 102'-2" of frontage on E. 84th Street; and

WHEREAS, the site is located in an R8B/R10A zoning district with the 154'-6" mid-block portion of the site along East 84th Street zoned R8B, and the portion of the site at the corner of E. 84th Street and East End Avenue - 68'-6" along E. 84th Street and 102'-2" along East End Avenue - zoned R10A; and

WHEREAS, the site is occupied by a six-story school building; and

WHEREAS, this application was brought on behalf of the Chapin School (the "School"); and

WHEREAS, on December 1, 1987, under BSA Cal. No. 498-87-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit in an R8B/R10 zoning district, an enlargement of an existing six-story school to allow for the construction of a new gymnasium; and

WHEREAS, the 1987 proposal, which was built on a

portion of the site split between the two zoning districts, required waivers for lot coverage, rear yard, and sky exposure plane within the R8B zoning district; and

WHEREAS, subsequent to the grant, the site was rezoned to R8B/R10A; and

WHEREAS, on March 26, 1996, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit an enlargement of the School to accommodate a new library, gymnasium, and performing arts facility; and

WHEREAS, the 1996 proposal, which was built within a portion of the site split between the two zoning districts, required waivers for lot coverage, street wall, height, and setback; and

WHEREAS, the applicant now proposes to add three floors above the east wing of the School, located at the corner of East End Avenue and E. 84th Street in the portion of the lot wholly within the R10A zoning district; and

WHEREAS, the applicant represents that this enlargement will help accommodate the School's science program and will include: classrooms, labs, office space, and a new visual arts center; and

WHEREAS, the applicant represents that the School determined that the need for the expansion of the science program was necessary after an evaluation by the New York State Association of Independent Schools; and

WHEREAS, additionally, the applicant represents that the proposed enlargement is designed to better serve the existing student body and will not result in an increase in enrollment or faculty; and

WHEREAS, the Board notes that the proposed enlargement, entirely within the R10A zoning district, is within the bulk parameters permitted within the zoning district and that no new waivers or modifications to existing waivers are required; and

WHEREAS, specifically, as to floor area, the enlargement will add approximately 21,000 sq. ft. of floor area to the existing 49,041 sq. ft. of floor area currently within the R10A zoning district (there are 60,274 sq. ft. of floor area located with the R8B zoning district) and will increase the FAR within the R10A portion of the site from 4.8 to 6.9 (the R10A zoning district permits a maximum FAR of 10.0); and

WHEREAS, as to height, with the proposed enlargement, the street wall height will be increased from 83 feet to 117 feet (the R10A zoning district permits a maximum street wall of 150 feet); and

WHEREAS, the applicant represents that because the greenhouse will be relocated within the enlarged building, the waivers for height and setback required at its current location will be eliminated; and

WHEREAS, additionally, the applicant represents that the lot coverage, which did not comply with the prior R10 zoning district regulations, complies with R10A zoning district regulations, therefore that waiver is also no longer required; and

WHEREAS, accordingly, the Board finds that the

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proposed amendments are appropriate.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on March 26, 1996, so that as amended this portion of the resolution shall read: “to permit the proposed three-story enlargement to the existing school *on condition* that all work and site conditions shall comply with drawings marked ‘Received July 21, 2006’– (16) sheets; and *on further condition*:

THAT the conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

(DOB Application No. 104484880)

Adopted by the Board of Standards and Appeals, October 17, 2006.

228-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Five D’s Irrevocable Trust, owner.

SUBJECT – Application July 15, 2006 – Extension of Term of a previously granted special permit under section 73-44 of the zoning resolution which permitted the reduction, from 40 to 25 in the number of required accessory off-street parking spaces for a New York vocational and educational counseling facility for individuals with disabilities (Use Group 6, Parking Requirement Category B1) located in an M1-1 zoning district.

PREMISES AFFECTED – 1209 Zerega Avenue, west side of Zerega Avenue between Ellis Avenue and Gleason Avenue, Block 3830, Lot 44, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an amendment to eliminate the term of the special permit, which allows the reduction in the number of required parking spaces for an existing counseling facility; and

WHEREAS, a public hearing was held on this application on September 19, 2006, after due notice by publication in *The City Record*, and then to decision on October 17, 2006; and

WHEREAS, this application is brought on behalf of the private fee owner who leases the property to Vocational and Educational Services for Individuals with Disabilities (VESID),

a state agency; and

WHEREAS, the site is located on the west side of Zerega Avenue, between Ellis and Gleason Avenues, within an M1-1 zoning district; and

WHEREAS, the site is occupied by a one-story with cellar building, with 25 attended accessory parking spaces; and

WHEREAS, on July 1, 1997, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-44, authorizing a reduction in the number of required parking spaces from 40 to 25 for VESID, a vocational and educational counseling facility for individuals with disabilities operated by the State of New York (a Use Group 6 use in Parking Requirement Category B1); and

WHEREAS, said grant was for a period of ten years to expire on July 1, 2007; and

WHEREAS, the applicant requests that the term of the special permit be eliminated; and

WHEREAS, at hearing, the Board asked the applicant if there had been any changes to the parking or the use of the site; and

WHEREAS, the applicant responded that there had not been any changes since the prior approval; and

WHEREAS, further, the applicant represents that the State intends to continue to lease the premises for occupancy by VESID or a comparable use; and

WHEREAS, in support of this assertion, the applicant submitted a renewal letter and a letter of intent from the lessor of the premises indicating an intent to renew the lease to the State of New York through February 28, 2017; and

WHEREAS, based upon the above, the Board finds that the applicant’s request to eliminate the term is appropriate, so long as the applicant complies with all relevant conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on July 1, 1997, so that, as amended, this portion of the resolution shall read: “to permit the elimination of a term for the special permit, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received July 15, 2006’–(1) sheet; and *on further condition*:

THAT there shall be no change in the ownership, operating control, or use of the subject premises without the prior approval of the Board;

THAT no certificate of occupancy shall be issued if the use is changed to a use listed in Parking Requirement Category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB App. No. 201055188)

Adopted by the Board of Standards and Appeals, October 17, 2006.

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for George Marinello, owner; Wendy’s Restaurant, lessee.

SUBJECT – Application January 12, 2006 – Pursuant to Z.R. §§72-21 and 72-22 for the extension of term for ten years for an accessory drive thru facility at an eating and drinking establishment (Wendy’s) which one-year term expired February 1, 2006. An amendment is also proposed to extend the hours of operation of the accessory drive-thru facility to operate until 4 a.m. daily. The premise is located in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, between 91st Street and Remsen Avenue, Block 8108, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD#17BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term of a special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on February 1, 2006, as well as an amendment to extend the hours of operation; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, with continued hearings on June 6, 2006, July 18, 2006, August 22, 2006, and September 26, 2006, and then to decision on October 17, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan; and

WHEREAS, Community Board 17, Brooklyn, recommends approval of this application; and

WHEREAS, during the hearing process, neighbors of the site provided testimony in opposition to the approval, citing concerns about noise at the drive-through, the hours of operation of the parking lot, restaurant customers entering neighboring property, the garbage removal schedule, landscaping, property damage, and the presence of debris and animal waste; these concerns are addressed below; and

WHEREAS, the site is located on the west side of Ditmas Avenue between East 91st Street and Remsen Avenue, within a C1-2 (R5) zoning district; and

WHEREAS, the site is occupied by an existing eating and drinking establishment (a Wendy’s fast food restaurant), with a drive-through facility and 25 accessory parking spaces; and

WHEREAS, on August 14, 2001, under the subject calendar number, the Board granted a special permit authorizing the operation of this establishment with an accessory drive-through facility; and

WHEREAS, under the original grant, the approved hours of operation for the drive-through facility were from 10:00 a.m. to 11:00 p.m., Sunday through Thursday, and 10:00 a.m. to 12:00 a.m., Friday and Saturday; and

WHEREAS, on February 1, 2005, the grant was amended to allow for an extension of the hours of operation for the drive-through from 10:00 a.m. to 1:00 a.m., daily; this grant was for a term of one year, to expire on February 1, 2006; and

WHEREAS, in the instant application, in addition to an extension of term, the applicant requests Board approval of an extension of the hours of operation of the drive-through facility to 2:00 a.m., Sunday through Wednesday, and to 3:00 a.m., Thursday through Saturday; and

WHEREAS, the applicant initially proposed to extend the hours of the drive-through until 4:00 a.m., daily, but revised the application; and

WHEREAS, at hearing, the Board asked the applicant why the additional hours of operation were needed; and

WHEREAS, the applicant states that the restaurant needs the additional hours of operation in order to compete with nearby fast food restaurants; and

WHEREAS, the applicant submitted financial information in support of this assertion;

WHEREAS, at hearing, the Board asked the applicant to address certain neighbors’ complaints about: 1) noise at the drive-through, 2) the hours of operation of the parking lot, 3) restaurant customers entering neighboring property, 4) the garbage removal schedule, 5) landscaping, 6) property damage, and 7) the presence of debris and animal waste; and

WHEREAS, as to the noise at the site, at the Board’s suggestion, the applicant posted a sign visible from the drive-through lane that reminds patrons to lower their radio volume; and

WHEREAS, as to the hours of operation of the parking lot, a condition of the 2005 grant was that at 11:00 p.m. when the dining room closes each night, restaurant staff would chain off the parking areas, as specified on the BSA-approved plans, so that no vehicle access to these areas is possible; and

WHEREAS, in response to complaints that the parking area has not been closed in accordance with the noted condition, the Board directed the applicant to chain off the lot each night per the condition, and post a sign that reads: “This area of the parking lot closes at 11:00 p.m.”; and

WHEREAS, additionally, the applicant represents that a locked chain will be pulled across the entrance to the parking

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lot by 11:00 p.m. each night; and

WHEREAS, the applicant submitted photographs of the above-noted signs and lock installed at the site; and

WHEREAS, as to restaurant customers entering neighboring properties, certain neighbors requested that trees at the rear of the site be removed so that visitors to the site would be discouraged from entering the neighboring property along 91st Street; and

WHEREAS, at the neighbors' suggestion, the applicant removed the landscaping at the rear of the property, along the lot line shared with residences in order to discourage the entering of neighboring property; and

WHEREAS, as to the garbage removal schedule, the Board asked the applicant to limit the hours of garbage removal so as to lessen the impact of after hours pick-up on the residential neighbors; and

WHEREAS, at the Board's suggestion, the applicant agreed to limit the hours of garbage removal to between 6:00 a.m. and 1:00 a.m.; and

WHEREAS, as to landscaping, at the Board's suggestion, the applicant cut back shrubbery to ensure that it remained within the boundaries of the site; and

WHEREAS, as to property damage, certain neighbors complained of water damage to a neighboring yard and front stoop caused by a sprinkler at the site; and

WHEREAS, at the Board's suggestion, the applicant corrected the sprinkler so that it would only spray on the subject premises; and

WHEREAS, the applicant also repaired the stoop to the neighbor's satisfaction; and

WHEREAS, as to the presence of debris and animal waste along the perimeter of the site, the applicant agreed to maintain the site in better condition and to promptly remove such debris and waste from the site; and

WHEREAS, lastly, the Board suggested that in order for the applicant to better respond to any problems at the site, a sign providing contact information for the restaurant manager be posted in a prominent location at the site; and

WHEREAS, the applicant submitted photographs of a sign reading "Any comments or suggestions regarding the operation of this facility should be directed to the store manager" with the manager's contact information listed; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term and amendment is appropriate, so long as the restaurant complies with all relevant conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on August 14, 2001, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from February 1, 2006, and to permit the extension of hours of operation; *on condition* that all work and site conditions shall comply with drawings marked 'Received September 12, 2006'- (1) sheet and 'August 8, 2006'-(4) sheets; and *on further condition*:

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

THAT the term of this grant shall be for five years from the expiration of the prior grant, to expire on February 1, 2011;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all garbage removal shall be performed between the hours of 6:00 a.m. and 1:00 a.m.;

THAT the hours of operation for the drive-through shall be from 10:00 a.m. to 2:00 a.m., Sunday through Wednesday, and 10:00 a.m. to 3:00 a.m., Thursday through Saturday;

THAT the parking lot shall be closed and chained off at 11:00 p.m. each night;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT signs reading: "Please lower your radio as a courtesy to our neighbors"; "This area of the parking lot closes at 11:00 p.m."; and "Any comments or suggestions regarding the operation of this facility should be directed to the store manager" shall be prominently posted at the site in accordance with the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB App. No. 301128232)

Adopted by the Board of Standards and Appeals, October 17, 2006.

866-49-BZ, Vol. III

APPLICANT – Carl. A. Sulfaro, Esq., for 2912 Realty, LLC, owner.

SUBJECT – Application June 12, 2006 – Pursuant to ZR 11-411 for an Extension of Term for ten years for a gasoline service station (Shell Station) which expired on October 7, 2006, a Waiver of the Rules of Practice and Procedure for filing subsequent to the expiration of term and an Amendment to legalize the change in signage, new storefront and replacement of the wrought iron fencing with white vinyl fencing. The premise is located in an R3-X zoning district. PREMISES AFFECTED – 200-01/07 47th Avenue, northeast corner of 47th Avenue and Francis Lewis Boulevard, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

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APPEARANCES –

For Applicant: Carl A. Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for decision, hearing closed.

413-50-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application October 12, 2005 – Pursuant to ZR §11-411 and §11-412 for an Extension of Term of a Gasoline Service Station-UG 16 (BP North America) for ten years which expired on November 18, 2005. This instant application is also for an Amendment to legalize modifications to the previously approved signage on site.

PREMISES AFFECTED – 691/703 East 149th Street, northwest corner of Jackson Avenue, Block 2623, Lot 140, Borough of The Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

1888-61-BZ

APPLICANT – Alfonso Duarte, for Ali Amanolahi, owner.

SUBJECT – Application June 21, 2005 – Pursuant to Z.R. §11-412 for an Amendment to an eating and drinking establishment and catering hall for the further increase in floor area and the to legalize the existing increase in floor area, the separate entrance to the catering hall and the drive thru at the front entrance. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 93-10 23rd Avenue, southwest corner of 94th Street, Block 1087, Lot 1, Elmhurst, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for decision, hearing closed.

441-65-BZ

APPLICANT – Sheldon Lobel, P.C. for Eleanor Barrett c/o JP Morgan Chase, owner; Hess Amerada Corporation, lessee.

SUBJECT – Application March 20, 2006 – Pursuant to ZR 73-11 & 73-211 an Amendment to a previously granted special permit for the redevelopment of a gasoline service station, to construct an accessory convenience store (Hess Express), to construct a new canopy and six pump islands with MPD dispensers and one diesel fuel dispenser. The premise is located in C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2488 Hylan Boulevard, located on the east side of Hylan Boulevard between Jacques Avenue and New Dorp Lane, Block 3900, Lot 12, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Richard Lobel, Marc Pilotta and Erwin Andres.

For Administration: Anthony Scaduto, Fire Department

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10:00 A.M., for continued hearing.

459-73-BZ

APPLICANT – Sheldon Lobel, P.C., for Joseph Angelone, owner.

SUBJECT –Application August 21, 2006 - Extension of Term of a special permit, granted pursuant to section 73-50 of the zoning resolution, allowing a waiver of the rear yard requirement for a lot located along district boundaries. The premises is located within a C8-1 zoning district.

PREMISES AFFECTED – 2424-48 Flatbush Avenue, southwest corner of the intersection of Flatbush Avenue and Avenue T, Block 8542, Lots 41 and 46, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

1289-80-BZ

APPLICANT – Cozen O’Connor by Barbara Hair, Esq., for Fred Straus, owner; Bally Total Fitness, lessee.

SUBJECT –Application August 18, 2006 - Extension of Term of a variance allowing the operation of a Physical Culture establishment in a C1-3/R6 zoning district.

PREMISES AFFECTED – 298 West 231st Street, southwest corner of Tibbett Avenue, Block 5711, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #8BX

MINUTES

APPEARANCES –

For Applicant: Barbara Hair.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October
24, 2006, at 10 A.M., for decision, hearing closed.

938-82-BZ

APPLICANT – Eric Palatnik, P.C., for A. Brothers Realty,
Inc., owner; Eugene Khavenson, lessee.

SUBJECT – Application August 4, 2006 - to re-open the
previous BSA resolution granted on May 17, 1983 to extend
the term of the variance for twenty (20) years. The
application also seeks a waiver of the BSA Rules of Practice
and Procedure as the subject renewal request is beyond the
permitted filing period. Prior grant allowed a one-story
commercial office building (UG 6) in an R4 district;
contrary to ZR Section 22-10.

PREMISES AFFECTED – 2470 East 16th Street, northwest
corner of Avenue Y, block 7417, Lot 36, Borough of
Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to November
14, 2006, at 10 A.M., for decision, hearing closed.

331-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Sean Porter,
owner.

SUBJECT – Application April 20, 2006 – Application seeks
an extension of term for a special permit under section 73-
244 of the zoning resolution which permitted the operation
of an eating and drinking establishment with entertainment
and dancing with a capacity of more than 200 persons at the
premises. In addition the application seeks a waiver of the
Board's Rules and Procedure due the expiration of the term
on April 20, 2005. The site is located in a C2-3/R6 zoning
district.

PREMISES AFFECTED – 1426-1428 Fulton Street,
Southern side of Fulton Street between Brooklyn and
Kingston Avenues, Block 1863, Lot 9, 10, Borough of
Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October
24, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

332-05-A/333-05-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for
LMC Custom Homes, owner.

SUBJECT – Application November 17, 2005 – Application
to permit the construction of two one-family dwellings within
the bed of a mapped street (Enfield Place). Contrary to
General City Law Section 35. Premises is located in an R4
Zoning district.

PREMISES AFFECTED – 72 & 74 Summit Avenue, Block
951, Lot p/o 19 (tent 25 and 27), Borough of Staten Island

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and
Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough
Commissioner, dated October 21, 2005, acting on Department of
Buildings Application Nos. 500779357 and 500779366, reads in
pertinent part:

“The proposed building is in the bed of a mapped
street and contrary to Article 3, Section 35 of the
General City Law. Therefore, approval from the
Board of Standards and Appeals is required.
Proposed building is mapped within R-2 Zoning
district.”; and

WHEREAS, a public hearing was held on this application
on August 22, 2006, after due notice by publication in the *City
Record*, with a continued hearing on September 12, 2006, and
then to decision on October 17, 2006; and

WHEREAS, the subject site is located in R2 and R3-2
zoning districts within the Special Natural Area District (NA-
1); and

WHEREAS, the applicant proposes to build a total of
five single-family homes at the site, with two homes parallel
to and three perpendicular to the mapped Enfield Place; and

WHEREAS, the two of the homes are proposed to be
built perpendicular to Enfield Place, on tentative lots 25 and
27, and would be located within the bed of Enfield Place; and

WHEREAS, both of the lots within the bed of Enfield
Place are 52.56 ft. by 125 ft., with a total lot area of 6,302 sq.
ft. and are currently vacant; and

WHEREAS, access to the development is proposed to

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be provided via a new T-shaped private street providing access to the homes from Summit Avenue, a final mapped street; and

WHEREAS, the Board notes that because the site is within the Special Natural Area District, the applicant must seek site plan approval from the City Planning Commission (CPC); and

WHEREAS, the applicant must also receive lot subdivision approval from CPC; and

WHEREAS, by letter dated May 31, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 15, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an adopted Drainage Plan D-4, which calls for a future 10-inch diameter sanitary sewer and a 12-inch diameter storm sewer to be installed in Enfield Place west of Summit Avenue; and

WHEREAS, therefore, DEP requires the applicant to provide a 32-ft. wide sewer corridor for the purpose of the future installation, maintenance, and/or reconstruction of the drainage plan, 10-inch diameter sanitary sewer, and 12-inch storm sewer; and

WHEREAS, in response to DEP's request, the applicant proposes a 20-ft. wide sewer corridor running through tentative lots 25 and 27, between the proposed houses, for the installation, maintenance, and/or reconstruction of the future sewers; and

WHEREAS, additionally, the applicant proposes a 30-ft. wide sewer corridor abutting tentative lots 25 and 27, running along the easterly portion of the mapped Enfield Place; and

WHEREAS, the proposed internal house sewer connection for the development will run from tentative lots 25 and 27 to the 8-inch diameter existing sanitary sewer in Summit Avenue, which will be located outside of the sewer corridor; and

WHEREAS, by letter dated August 21, 2006, DEP indicates that it has reviewed this proposal and finds it acceptable; and

WHEREAS, by letter dated May 25, 2006, the Department of Transportation (DOT) states that it has reviewed the application and has recommended denial on the grounds that the development of the proposed lots is within the mapped right of way and will prevent future development of the roadway as a connection to Summit Avenue; and

WHEREAS, however, the Board notes that the subject property is not presently included in DOT's Capital Improvement Program as stated in DOT's letter; and

WHEREAS, by letter dated May 4, 2006, the Staten Island Borough President has also recommended denial of this proposal as it will preclude connecting Summit Avenue to Richmond Road; and

WHEREAS, at hearing, the Board asked the applicant to provide an alternate site layout, which would not include any development within the bed of Enfield Place; and

WHEREAS, in response, the applicant provided a plan for five homes in a single row along Enfield Place; and

WHEREAS, the applicant represents that the alternate plan would create financial and practical difficulties; and

WHEREAS, specifically, the applicant represents that due to the grade at the site, development of a single row of homes would require additional expensive measures for the proposed gravity-based internal sanitary sewer line; and

WHEREAS, the applicant represents that the additional measures would likely include a private sewer filing with the City or an internal sewer pumping system at the rear of all units, which would necessitates further easements and the elimination of the proposed swimming pools; and

WHEREAS, the applicant submitted a letter from the project architect supporting this assertion; and

WHEREAS, the applicant also represents that the initial proposal with one home within the bed of Enfield Place provides better access for emergency vehicles since there would be a corner for making turns in the middle of the development rather than a straight dead end; and

WHEREAS, the applicant represents that the initial proposal meets Fire Department access requirements; and

WHEREAS, at hearing, the Fire Department stated that the alternate plan was unacceptable; because it did not provide a vehicle turnaround, even a requirement to fully sprinkler all homes would not provide an acceptable level of safety; and

WHEREAS, based on the above, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated October 21, 2005, acting on Department of Buildings Application Nos. 500779357 and 500779366 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received August 15, 2006"- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT no permits shall be issued prior to CPC review and approval;

THAT any modifications to the BSA-approved plans, subsequent to CPC review, must be approved by the Chair prior to issuance of any permits;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

174-05-A

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APPLICANT – Norman Siegel on behalf of Neighbors Against N.O.I.S.E., GVA Williams for (Hudson Telegraph Associates, LP) owner; Multiple lessees.

SUBJECT – Application July 29, 2005 – Neighbors against N.O.I.S.E. is appealing the New York City Department of Buildings approval of a conditional variance of the New York City Administrative Code §27-829(b)(1) requirements for fuel oil storage at 60 Hudson Street.

PREMISES AFFECTED – 60 Hudson Street, between Worth and Thomas Streets, Block 144, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Deborah Allen.

For Administration: Phyllis Arnold, Department of Buildings.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the instant appeal, brought by a coalition of neighbors to the building at the subject premises (the “Building”) known as Neighbors Against N.O.I.S.E. (hereinafter, “Appellant”), requests that the Board overturn a variance of the City’s Building Code issued by the Department of Buildings (“DOB”) on June 29, 2005 (the “Variance”); and

WHEREAS, the Variance reads in pertinent part:

“The building at 60 Hudson Street is an existing as-of-right commercial occupancy with many tenants in the telecommunications industry. The Building is 24 stories plus mezzanine and has floor plates of over 50,000 square feet each with thick concrete floors and high ceilings. The Building functions as a central switching facility for the telecommunications industry. Significant portions are leased to multiple telecommunications providers. Many of these tenants support essential telecommunications services to the region. As a result, they require secondary power capability in the event of a power outage.

The Building has experienced three power outages in recent years: the first as a result of the events of September 11, 2001; the second on July 20, 2002, when there was an explosion and fire in Con Edison’s 14th Street facility; and most recently on August 14, 2003 when the entire northeast lost power.

Hudson Telegraph Associates (“Hudson”), the building owner, has applied for a variation from Code requirements for fuel oil storage under New York City Charter §645(b)(2) and Administrative Code §27-107. Section 27-107 of the Administrative Code authorizes the Commissioner to vary the requirements of the Code in specific cases pursuant to the provisions of §645(b)(2) of the Charter. That section provides that “where there is practical difficulty in complying strictly with the law relating

to the use of prescribed materials, the installation or alteration or service equipment, or methods of construction, and where equally safe and proper materials or forms of construction may be used, the Commissioner may allow the use of such materials, or of such forms of construction provided the spirit of the law is observed, safety secured, and substantial justice done.”

The Department of Buildings retained Arup, a premier risk consultant, to assist in its evaluation of the application. In addition to Arup’s evaluations and Hudson’s submissions, the Department has considered comments from the Fire Department (“FDNY”), representatives of Neighbors Against Noise, Council Member Alan Gerson, Assemblywoman Deborah Glick, and Congressman Jerrold Nadler.

For the reasons that follow, the Department grants the requested variation on condition.

FINDINGS

The 15 fuel tanks at issue on floors 3, 10, 11, 12, 13 and Mezzanine (Affected Floors) are used as day tanks for emergency generators designed to supply power in the event of an outage. The 15 tanks have a capacity to hold 3,605 gallons of fuel, in comparison with the maximum of 1,650 permitted by Code on these six floors.

Hudson has demonstrated practical difficulty in complying strictly with the requirements of §27-829(b)(1). Specifically, the floors at issue are shared by multiple tenants, each needing up to four hours of back-up power, for which 275 gallons is inadequate. Space constraints make it operationally unfeasible to relocate the generators to other floors. Hudson has demonstrated that the excess fuel tanks can be maintained in a manner that is equally safe to that which the Code requires and achieves the purposes of the 275 gallon limitation.

PROPOSAL

First, Hudson has proposed that the amount of fuel stored inside and above the lowest story of the Building will total approximately 6,400 gallons, including 1,600 on main roof and the setbacks, a quantity under the maximum of 6,875 gallons allowed by the Code.

Second, Hudson’s proposal calls for enhanced fire safety measures to be implemented with respect to those tanks on the Affected Floors. Hudson proposes to enclose each tank room as well as its accompanying generator room with two-hour fire-resistant walls extending from floor to ceiling. It will fire-rate the floor/ceiling assemblies and all penetrations as well as the structural elements in these rooms. The tank rooms will thus be the functional equivalent of being located on separate floors. The tank and generator rooms will be protected by smoke and heat detectors. Both the tank and the generator rooms will have automatic

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fire suppression systems and Hudson commits to sprinklering the corridors of the Affected Floors as well as all public halls to hand-filled packaged generator sets that may be located on other floors. Additionally, there is a proposed spill prevention program that includes a sill around each fuel room, a leak detection system for the piping, and rupture-containment tanks. The Fire Alarm Command Station (“FACS”) is proposed to monitor all fire-detection and fire-alarm systems in the Building. There is proposed to be on-hand 24/7 a certified fire safety director, and all rooms will have a common key system to ease access by the Fire Department. All tanks, generators, and rooms will be vented in accordance with Code.

Third, to enhance the safety of the tanks in the Building that require manual filling, Hudson proposes to protect the Building’s loading dock with a dry pipe sprinkler system.

DETERMINATION

The Department finds that there is practical difficulty in Hudson’s complying strictly with §27-829(b)(1) of the Code as to fuel tanks located on floors 3, 10, 11, 12, 13, and the Mezzanine. The Department also finds that Hudson’s proposal offers an equivalent level of safety to that provided by the Code, and that granting the variation from Code observes the spirit of the law, secures safety, and effects substantial justice, PROVIDED THAT:

1. The entire travel path of the fuel transferred by hand from the loading dock to the tanks needing re-fueling shall be identified, marked, and sprinklered. This includes corridors, rooms/tenant spaces through which the path travels, generator rooms, and tank rooms. The sprinklers here required in generator and tank rooms shall be in addition to suppression systems provided in those rooms.
2. Manual transfer and dispensing of the fuel shall be undertaken by individuals holding a FDNY Certificate of Fitness for Handling Motor Fuel – Portable Containers (W-14). Certificate holders shall be trained in Hudson’s Spill Prevention and Countermeasures Plan.
3. The freight elevator shall be designated for the transport of manually transferred fuel, and there shall be back-up power for this elevator in the event of a power failure.
4. Fuel for manual filling operations shall be delivered in 55-gallon drums at the Building’s loading dock and shall travel along the paths identified for such purpose. (See number 1 above) Excess fuel may be stored in the basement in an approved area or storage room but only to the extent of one 55-gallon drum per generator whose fuel tank is manually filled.
5. There shall be a fire protection plan submitted to the Department and approved by FDNY for the manual transfer of fuel. It shall (a) set forth the procedures to be followed in connection with the transport and dispensing of fuel from the loading dock to the fuel storage tanks; and (b) set forth a spill prevention control plan. A copy of the approved plan shall be maintained at both departments.
6. There shall be a quantity of oil absorbent material maintained at all locations at which manual filling occurs sufficient to absorb fuel contained in the 55-gallon drum used for manual re-fueling.
7. There shall not be any manual filling of fuel tanks while the generator is running.
8. Pumped fuel supply from the basement shall stop upon detection of a leak or a fire affecting that fill piping system.
9. Tanks as well as tank rooms and generator rooms shall be vented in accordance with Code.
10. Tanks shall not be filled to more than 80% capacity.
11. There shall be provided 200% tank spill containment.
12. All tanks shall have a level-indicating device.
13. Fill connections on all manually-filled tanks, including tanks mounted under generators, shall be made accessible to avoid spills during manual filling.
14. All generators installed on the roof or setback roofs shall meet the noise control requirement of Code §27-770(a)(4), table 12-4.
15. All decommissioned fuel oil storage tanks shall be removed or closed and sealed in accordance with FDNY Rule, 3 RCNY 21-02. We understand FDNY will accept the use of foam as an approved material for this purpose.
16. Supplementary fire suppression, including water and FM 200 supplies shall be located outside tank rooms and generator rooms on the Affected Floors.
17. All fire detection and suppression systems as well as all other alarm and detection systems, including leak detection systems, shall connect to and be monitored at the FACS, which shall be monitored 24/7 by a Fire Safety Director.
18. The key that provides access to all fuel storage tanks shall be maintained at the FACS and be available to FDNY personnel at all times.
19. Upon request by FDNY, Hudson and its lessees will participate in an annual fire safety drill with respect to normal and emergency filling procedures.

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20. All operations shall conform to those proposed by Hudson and articulated in the PROPOSAL above.
21. The Department and FDNY shall have the right to periodically inspect the Building to monitor compliance with the terms of the variance.
22. Installation of additional manually-filled tanks shall not be permitted except for replacement of existing manually-filled tanks. All future requests for the installation of additional tanks or generators shall be subject to prior review from the Department's Deputy Commissioner for Technical Affairs. Any additional installations shall be in full compliance with the Code.
23. All future alterations to existing installations shall be in accordance with Code and with the terms and conditions of this variance.
24. All calculations and drawings must be made internally consistent before the design phase.
25. The floor plans shall be revised to indicate the location and capacity of all tanks including outdoor installations.

Within 30 days of the date of this letter, Hudson shall submit to Buildings a plan to implement the measures required as conditions to the grant of this variance. That plan shall include an assessment of phasing out the manual transfer of fuel. Buildings reserves the right to modify this variance based on the assessment submitted.

Finally, as requested by Council Member Alan Gerson, we understand Hudson has agreed to use low sulfur fuel to improve emission of combustion by-products to the outside air and that Hudson will advise all tenants of this requirement for all future fuel deliveries.”; and

WHEREAS, the Variance was issued to the owner of the Building (hereinafter, the “Owner”) by DOB Deputy Commissioner Fatma Amer, P.E.; and

WHEREAS, the record contains a July 27, 2005 letter from DOB Commissioner Patricia Lancaster, FAIA, stating that Ms. Amer was acting on her behalf when issuing the Variance, and that it is a final DOB determination; and

HEARINGS

WHEREAS, a special public hearing was held on this application on January 25, 2006 (the “First Hearing”), after due notice by publication in *The City Record*, with special continued hearings on June 7, 2006 (the “Second Hearing”) and September 13, 2006 (the “Third Hearing”), and then to decision on October 17, 2006; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, Appellant and DOB were represented by counsel in this proceeding; and

WHEREAS, representatives of the City's Fire Department (“FDNY”) provided testimony; and

WHEREAS, additionally, representatives of the Owner appeared and made submissions; and

WHEREAS, the following elected officials support the

appeal: Congressman Jerrold Nadler, Assemblywoman Deborah Glick, State Senator Martin Connor, Council Member Alan Gerson, and Borough President Scott Stringer; and

WHEREAS, Community Board 1, Manhattan, also supports the appeal; and

WHEREAS, finally, certain area residents testified or made submissions in support of the appeal; and

THE BUILDING

WHEREAS, the Building's certificate of occupancy (No. 115432) reflects that it has 24 floors and two mezzanines (an upper and a lower first floor mezzanine), as well as a basement, and lists the legal use as Use Group (“UG”) 6 offices, and the Occupancy Code as E (Business); and

WHEREAS, as reflected in the text of the Variance, the Building's floor plates are over 50,000 square feet each; and

WHEREAS, the Building is located in an M1-5 zoning district within the Tribeca neighborhood of Manhattan, where a UG 6, Occupancy Code E office building is allowed as of right; and

WHEREAS, the City's Landmarks Preservation Commission (“LPC”) designated the exterior and the interior lobby of the Building a landmark on October 1, 1991; and

WHEREAS, the Owner states that about 68 percent of the floor space within the Building is leased by various telecommunication companies; and

WHEREAS, some, but not all, of the floors are occupied by telecommunication companies that require emergency back-up generators for equipment in case of a power failure or black-out; and

WHEREAS, certain of these generators are connected to diesel fuel storage tanks located in the basement; others are connected to fuel storage tanks (known as day tanks) located on the floors; and

WHEREAS, the tanks on the floors that are not connected to any tanks in the basement are manual-filled; and

WHEREAS, the basement level also contains tanks that are for storage of fuel for heating purposes; and

WHEREAS, the Owner states that there are 65 total tanks in the Building, and that the capacity of all the tanks is 101,521 gallons; and

WHEREAS, some of the tanks are located in the basement and on the first floor, with the greatest gallon capacity being in the basement; and

WHEREAS, some tanks are located on the floors above the first floor; and

WHEREAS, additionally, some tanks are located outside the Building on the setbacks; and

WHEREAS, the Owner notes, however, that all tanks are only filled to 80 percent of capacity (a 81,217 gallon maximum of actual storage); and

WHEREAS, the Owner reports that 28 emergency generator systems on the floors above the first floor are fed from basement tanks, and that 18 systems rely on manual-filled day tanks; and

WHEREAS, eight of these 18 manual-filled tank systems are on the floors affected by the Variance; and

WHEREAS, the Owner further reports that the Building is currently undergoing a redesign that will result in a decline

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in manual-filled tanks to 12, and an increase in pipe-filled tanks to 34; and

PRE-BOARD PROCEDURAL HISTORY

WHEREAS, upon inspection of the Building in 2002, DOB inspectors noticed that several floors had multiple interior fuel storage tanks, in violation of Building Code § 27-829(b)(1); violations were issued on November 6, 2002; and WHEREAS, Building Code § 27-829(b)(1) (hereinafter, “27-829”), provides “Inside of building above the lowest floor. Fuel oil storage tanks having a capacity of two hundred seventy-five gallons or less may be installed inside of buildings above the lowest story when provided with a four inch thick concrete or masonry curb, or with a metal pan of gauge equal to the gauge of the tank, completely surrounding the tank and of sufficient height to contain two times the capacity of the tank. The number of such oil storage tanks shall be limited to one per story.”; and

WHEREAS, the Board notes that this provision is inapplicable to exterior tanks located outside on setbacks and roofs; such tanks do not count against the one per floor limitation; and

WHEREAS, however, DOB inspectors observed that six of the floors within the building have more than one interior tank; and

WHEREAS, specifically, at the time the inspection was made, the following floors had more than one interior tank: 3, 10, 11, 12 and 13 and the mezzanine (hereinafter, the “Affected Floors”); and

WHEREAS, in order to address these violations, the Owner applied to DOB for a variance of 27-829; and

WHEREAS, as reflected in the text of the Variance, DOB’s authority to vary or modify 27-829 derives from the City Charter and the Building Code; and

WHEREAS, specifically, City Charter § 645(b)(2) provides, in pertinent part, that “where there is practical difficulty in complying strictly with the law relating to the use of prescribed materials, the installation or alteration or service equipment, or methods of construction, and where equally safe and proper materials or forms of construction may be used, the Commissioner may allow the use of such materials, or of such forms of construction provided the spirit of the law is observed, safety secured, and substantial justice done.”; and

WHEREAS, Building Code § 27-107 provides “The requirements and standards prescribed in this code shall be subject to variation in specific cases by the commissioner, or by the board of standards and appeals, under and pursuant to the provisions of paragraph two of subdivision (b) of section six hundred forty-five and section six hundred sixty-six of the charter, as amended.”; and

WHEREAS, the application process lasted approximately two years; and

WHEREAS, during that time, the Owner made numerous submissions in support of its request for the Variance, including reports from its expert consultants in fire and general building safety; and

WHEREAS, DOB engaged a risk consultant (Arup and Partners Consulting Engineers; hereinafter, “Arup”) to assist

it in responding to the Owner; and

WHEREAS, DOB also consulted with FDNY; and

WHEREAS, Patrick McNally, FDNY’s Chief of the Bureau of Fire Prevention, and FDNY counsel Julian Bazel stated at the Second Hearing, in sum and substance, that the FDNY assessed the proposed Variance and the Building primarily to gauge whether reasonable fire safety was achieved, both in terms of prevention and in terms of protection of firefighters in the event of fire; and

WHEREAS, more specifically, Chief McNally stated that the FDNY role was to look at the way fuel was stored, where it was stored, and to examine the manual transfer component; and

WHEREAS, DOB, Arup and FDNY conducted an inspection of the Building in December of 2003; and

WHEREAS, DOB notes that Appellant and certain elected officials were also aware of the pending application; and

WHEREAS, at the end of a two year process, DOB granted the Variance; and

WHEREAS, on the Affected Floors, the Variance allows more than one tank of 275 gallon capacity; and

WHEREAS, DOB notes that as of right, the Building can contain 6,875 gallons of fuel on the floors above the first floor, since there are 25 floors above the first floor (including the roof and mezzanine), and 25 times 275 equals 6,875; and

WHEREAS, the Board notes that in its first submission, DOB cites to the roof as a floor for purposes of this calculation; and

WHEREAS, as discussed above, tanks on setbacks and the roof are not subject to the one per floor requirement of 27-829; and

WHEREAS, the Board does note that the certificate of occupancy lists two mezzanines (an upper and lower), so conceivably the multiplier still could be 25; and

WHEREAS, the text of the Variance itself also states that the as of right total capacity above the first floor is 6,875 gallons and does not reference the roof; and

WHEREAS, however, since it is not clear that each of the mezzanines counts as a separate floor, the Board feels that it is more appropriate to maintain that as of right, the floors above the first floor could accommodate 6,600 gallons of fuel (based on 24 stories, including a single mezzanine); and

WHEREAS, DOB also correctly notes that the Affected Floors could, as of right, accommodate six total tanks (one on each floor) with a total capacity of 1,650 gallons (six times 275 gallons); and

WHEREAS, the Variance contemplates 15 tanks on the Affected Floors, and assumes that each will be a 275 gallon tank (for a total capacity of 3,905 gallons); and

WHEREAS, however, the Owner notes that on the Affected Floors, some of the tanks in use are smaller than 275 gallons and some tanks have been eliminated since the Variance was granted; and

WHEREAS, as evidenced by floor plans of the Affected Floors submitted into the record by the Owner, the actual total tank capacity is 2,165 gallons; and

WHEREAS, thus, pursuant to the Variance, the increment of capacity over what is allowed as of right on the

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Affected Floors is 515 gallons; and

WHEREAS, DOB observes, and the Owner confirms, that tanks will be filled to 80 percent of nominal capacity; and WHEREAS, at 80 percent of capacity, the amount of fuel allowed as of right on the Affected Floors is 1,320 gallons (80 percent of 1,650); and

WHEREAS, 80 percent of the actual total tank capacity (2,165) is 1,732 gallons; and

WHEREAS, thus, because tanks are only filled to 80 percent of capacity, the increment of actual storage over what is allowed as of right is 412 gallons; and

WHEREAS, further, because not all of the Building's floors above the first floor contain tanks, even with the Variance, the total amount of fuel stored above the lowest story is less than what is permitted as of right; and

WHEREAS, specifically, as determined above, 6,600 total gallons are allowed as of right in the interior of the Building on the floors above the first floor; and

WHEREAS, based upon a chart submitted by DOB on May 17, 2006, which reflects the number and gallon capacity of tanks on each floor as well as roof and setbacks, as of May 4, 2006, the Board observes that the total amount of fuel capacity above the first floor is much less; and WHEREAS, this chart reveals that even when including tanks on setbacks, the total capacity of tanks above the first floor is 5,880 gallons; and

WHEREAS, Appellant does not dispute that DOB has the authority to vary 27-829; and

WHEREAS, instead, Appellant, in asking that the Board overturn the Variance, makes the following arguments: (1) the Variance will create a less safe condition than a Building Code-compliant condition; (2) the Owner does not suffer practical difficulties and could therefore comply with 27-829; (3) even assuming practical difficulties exist, they were self-created by the Owner; (4) DOB issued the Variance without the Owner first obtaining LPC approval for the tank installations; (5) so much fuel is stored in the building that it qualifies as a Bulk Oil Storage Plant pursuant to Fire Prevention Code § 27-4053, and thus cannot be located within 1000 ft. of a school, subway entrance/exit or subway ventilation shaft, or within 250 ft. of public park or residential zone; (6) the Variance impermissibly ignores: (a) fuel tanks located on the first floor of the Building; and (b) the amount of fuel in fuel risers and pipes; and

WHEREAS, for the reasons set forth below, the Board finds all of these arguments unpersuasive; and

SAFETY

WHEREAS, as to the first argument, the appellant states that DOB acted arbitrarily and capriciously in granting the Variance because the Building creates a clear and present danger to the surrounding community, even with the Variance provisions and conditions in place; and

WHEREAS, specifically, Appellant contends that: (a) DOB inappropriately only considered the Affected Floors when issuing the Variance; (b) the Variance conditions are inadequate to address the safety concerns raised by the Variance; (c) the Variance inappropriately permits the storage of high hazard material in violation of the Building Code; (d) the manual transfer of fuel, required for some of the tanks on the Affected

Floors, is fundamentally dangerous and can never be as safe as mechanical means of fuel distribution; and (e) noise and particulate emissions were inappropriately not considered; and *The Need for a Comprehensive Analysis*

WHEREAS, Appellant's primary argument is that DOB, in considering the Owner's request for the Variance, only focused on the Affected Floors and not the entire Building; and

WHEREAS, Appellant alleges that the Building is inherently dangerous because of the total amount of fuel stored there, both below, on and above the first floor; and

WHEREAS, Appellant further suggests that the Variance, because it permits more than the maximum amount of fuel on the Affected Floors, aggravates this danger; and

WHEREAS, Appellant argues that DOB should have engaged in a comprehensive risk analysis of the Building and all the fuel within it, in accordance with general (not specific to the Building) recommendations of a recent report of the National Institute of Standards and Technology ("NIST"); and

WHEREAS, Appellant also argues that DOB improperly failed to consider the ability of the Building to withstand a terrorist act or some other extraordinary event; and

WHEREAS, in response, DOB notes that it considered the Owner's variance application over the course of two years and consulted with both Arup and FDNY in assessing what safety concerns might result if the requested waiver was granted, and in developing conditions that would address any such safety concerns; and

WHEREAS, DOB cites to the various provisions and conditions of the Variance as evidence that all possible safety concerns were considered and addressed; and

WHEREAS, DOB also notes that the expertise utilized in formulating the Variance was informed by many of the concerns noted in the NIST report; and

WHEREAS, further, the Owner notes that the experts relied upon by DOB (Arup and FDNY) and one of its own experts (Dr. James Milke) have ample experience in analyzing catastrophic building events, including those that occurred on September 11, 2001; and

WHEREAS, the Board agrees that DOB proceeded cautiously and judiciously in reviewing the Owner's variance application, and that the solicitation of the expertise of both Arup and FDNY is evidence of this caution, regardless of the lack of any explicit mention of the NIST report in the Variance; and

WHEREAS, furthermore, neither the City Charter nor the Building Code require DOB to explicitly follow or refer to the recommendations found in the NIST report when issuing a Building Code variance; and

WHEREAS, thus, without intending any criticism of the NIST report, the Board finds that Appellant's apparent reference to it as the equivalent of binding authority upon DOB is misplaced and contrary to law; and

WHEREAS, moreover, notwithstanding the lack of any requirement to follow the NIST report, the Board disagrees with the fundamental contention that DOB took an inappropriately narrow view of the Building in granting the Variance; and

WHEREAS, as evidenced by the text of the Variance, areas other than the Affected Floors were in fact considered; and

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WHEREAS, the Variance provides, among other things, that the Owner will: (1) sprinkler all public halls to manual-filled packaged generator sets that may be located on other floors (aside from the Affected Floors); (2) provide a Fire Alarm Command Station to monitor all fire-detection and fire-alarm systems in the Building; (3) provide a certified fire safety director around the clock seven days a week; and (4) ensure that all rooms will have a common key system to ease access by FDNY; and

WHEREAS, a review of the Variance also reveals that many of the imposed conditions address Building-wide fire safety concerns, not just those related to the Affected Floors; and

WHEREAS, for instance, those conditions concerning the manual transfer of fuel, as well as conditions concerning the monitoring of safety systems by a Fire Safety Director, FDNY access, drills with respect to normal and emergency filling procedures and inspections, relate to the entire Building; and

WHEREAS, as to general Building safety, the Board observes that Appellant has not submitted any evidence that it is inherently unsafe; and

WHEREAS, while Appellant suggests that diesel fuel storage on the upper floors of a building is unsafe, the Board observes that 27-829 allows 275 gallons of fuel per floor in a UG 6, Class E building, regardless of the total amount of floors or the size of the floor plates; and

WHEREAS, further, as noted above, the total amount of fuel stored above the lowest story is well within the limits allowed as of right by the Building Code; and

WHEREAS, additionally, at the Second Hearing, Chief McNally stated that he observed the various fuel storage tanks in the Building, including those in the basement, and concluded that the total amount of fuel storage is normal for a building of this size; and

WHEREAS, finally, as to the possibility of a terrorist attack or other catastrophic event, the Board understands the particular sensitivity of those in the Tribeca neighborhood to the risk of such an occurrence and does not wish to minimize the sincerity of emotion that informs it; and

WHEREAS, however, the Board is unaware of any law currently in effect that would require DOB to engage in an explicit assessment of the impact that a deliberate act of sabotage might have upon a building prior to the issuance of a variance of a Building Code provision related to the maximum amount of fuel tanks per floor; and

WHEREAS, the Board notes that the only detailed example of a potential act of sabotage offered by Appellant was its expert's proposed scenario in which a disgruntled building employee would have the ability to potentially start multiple fires at tanks on Affected Floors; and

WHEREAS, while the Board is not inclined to discount even the remotest possibility of foul play as a legitimate concern in the abstract, it observes that 27-829 does not operate to minimize the possibility of such acts; and

WHEREAS, instead, as noted by applicant and as discussed below, this provision serves as a mechanism that could potentially assist in containing the spread of fire to a

particular floor; and

WHEREAS, accordingly, DOB is not required conduct a Building-wide assessment of vulnerability to sabotage or to fashion a condition that would specifically address this risk; and

WHEREAS, instead, it is reasonable to conclude that security against sabotage is, and should remain, the responsibility of the Owner and the Building's tenants, in consultation and cooperation with the New York City Police Department as indicated; and

The Adequacy of the Variance Conditions

WHEREAS, Appellant argues that the conditions imposed in the Variance do not provide an equivalent amount of safety to 27-829, or to other codes not currently applicable in the City; and

WHEREAS, Appellant suggests that many of the conditions address the manual transfer of fuel, or are just common sense requirements that do not exceed Building Code requirements; and

WHEREAS, DOB responds that it carefully considered the impact of the requested Building Code waivers, and in consultation with the FDNY and Arup, carefully crafted provisions and conditions that would effectively address any safety concerns; and

WHEREAS, DOB maintains that in many respects the conditions attached to the Variance raise the level of fire safety within the Building significantly beyond what would result under an as of right condition; and

WHEREAS, first, the Board finds discussion of other codes currently without legal effect in this City to be irrelevant; and

WHEREAS, the Board understands that certain elements of the Building and Fire Code are in the process of being updated, and that the provisions at issue here may be amended as part of this process; and

WHEREAS, however, both DOB and this Board are only authorized to rule upon codes and laws that are in effect today; and

WHEREAS, moreover, there is no evidence that the provisions of the other cited codes, if applied in the City, would be more restrictive than existing Building Code provisions in all cases; and

WHEREAS, second, the Board has reviewed the conditions and requirements of the Variance and finds that they are appropriately tailored to the concern at hand; and

WHEREAS, as stated by the Appellant, the goal of 27-829 is to prevent the spread of fire within a building; and

WHEREAS, by limiting the amount of tanks to one per floor, 27-829 presumes that the floors and ceiling of a floor within a building will act as a sufficient fire stop such that a fire on one floor would not potentially ignite more than one tank; and

WHEREAS, thus, any variation of 27-829 would need to include measures designed to achieve this goal; and

WHEREAS, the Board observes that many of the Variance provisions and conditions are designed with this goal in mind; and

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WHEREAS, specifically, the Board notes that the enclosure rooms are fire-rated and sprinklered, and contain automatic fire suppression systems; and

WHEREAS, the Board considers these specific requirements well-measured and sufficient to address any increase in danger that the absence of strict compliance with 27-829 might create; and

WHEREAS, additionally, Chief McNally observed at the Second Hearing that after visiting the building and reviewing the proposed Variance conditions, he was satisfied that his prevention and firefighting concerns were addressed, and stated that the maintenance of more than one tank on the Affected Floors does not pose a problem for FDNY in terms of operations; and

WHEREAS, finally, the Board observes that an expert produced by Appellant at the First Hearing informed the Board that the Variance conditions represented improvements over an as of right condition, and that the conditions were adequate; and

WHEREAS, accordingly, it rejects Appellant's argument that the Variance provisions and conditions are insufficient in creating an equivalent level of safety as full compliance with 27-829; and

The Manual Transfer of Fuel

WHEREAS, as noted above, certain of the day tanks on the Affected Floors (as well as certain other tanks not on Affected Floors) are filled through manual transfer of fuel; and

WHEREAS, Appellant argues that the manual transfer of fuel to these day tanks on the Affected Floors is inherently less safe than the piping of fuel to tanks on the floors from tanks in the basement; and

WHEREAS, Appellant states that generally no system that relies upon human conduct is safer than an engineered system that relies only on mechanical processes; and

WHEREAS, more specifically, in a submission dated April 25, 2006, Appellant's consultant states that the regular transporting of fifty-five gallon drums of liquid fuel inside the Building presents an increased likelihood of potential ignition, whether accidental or intentional; and

WHEREAS, the consultant goes on to state that such drums may be dropped or damaged during transport; and

WHEREAS, at the Second Hearing, Appellant's consultant expressed concern that there would be multiple employees from multiple employers carrying carts with fuel drums through a variety of areas within the Building; and

WHEREAS, in its August 24, 2006 submission, Appellant argues that manual filling of tanks is a violation of the Building Code and again reiterates that such activity is unsafe; and

WHEREAS, the Board observes that Chief McNally testified that piping was preferable to manual filling, if piping could be achieved; and

WHEREAS, however, Chief McNally also testified that to ensure equal safety, any individual engaging in the manual transfer of fuel within the Building would have to possess a certificate of fitness for fuel handling so that the individual would have an understanding of how to safely transfer fuel to and fill the tanks; and

WHEREAS, this certificate requirement is a condition of the Variance, and the Owner testified that only its employees

(not tenants' employees) would handle the manual transfer of fuel; and

WHEREAS, in addition to the certificate requirement, many of the Variance provisions and conditions concern manual transfer; and

WHEREAS, for instance, the manual fuel transfer path is fully sprinklered and spill containment materials must be supplied; and

WHEREAS, the Board notes that these provisions and conditions were formulated by DOB in direct consultation with FDNY and with Arup; and

WHEREAS, though manual transfer may not be the preferred method of delivering fuel to certain of the tanks located on the upper floors of the Building, it is the Board's conclusion that the Variance provisions and conditions act to acceptably mitigate the risks associated with such transfer; and

WHEREAS, in other words, even if it is not the preferable method of fuel distribution, manual transfer can be conditioned such that it is sufficiently safe to achieve the purpose of the Building Code and meet with FDNY approval, as occurred here; and

WHEREAS, thus, the Board finds that the manual transfer component of the Variance does not foreclose the possibility of a finding that the Variance provides a degree of safety that is the equivalent of full compliance with 27-829; and

WHEREAS, that being said, the Board notes that at the Third Hearing, the Owner states that after manual filling occurs, there will be no storage of excess fuel in 55 gallon drums at the Building; and

WHEREAS, instead, the plan is to have pre-filled drums arrive at the loading dock, which will then be transferred to tanks in need of manual refilling until emptied; and

WHEREAS, the Board finds that this is an acceptable plan, but notes that one of the Variance conditions allows the storage of excess fuel in 55 gallon drums in the basement; and

WHEREAS, so that the Variance reflects the intentions of the Owner, the Board will modify the Variance to add the following condition: "There shall be no storage of excess fuel in 55 gallon drums in the basement or anywhere else within the building"; and

WHEREAS, additionally, that part of condition 4 in the Variance that reads "Excess fuel may be stored in the basement in an approved area or storage room but only to the extent of one 55-gallon drum per generator whose fuel tank is manually filled" shall have no effect; and

High Hazard Occupancy

WHEREAS, Appellant argues that the storage of diesel fuel within the Building, and the Building itself, constitutes a high hazard occupancy pursuant to the Building Code; and

WHEREAS, Appellant submitted a letter from a consultant dated August 13, 2006 in support of this position; and

WHEREAS, the consultant, both in this letter and in testimony given at the Third Hearing, contends that the storage of diesel fuel constitutes a high hazard occupancy (Occupancy Group A) pursuant to Building Code § 27-243; and

WHEREAS, Building Code § 27-243 provides in part "Buildings and spaces shall be classified in the high hazard occupancy group when they are used for storing,

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manufacturing, or processing potentially-explosive products or materials, or highly-combustible or highly-flammable products or materials that are likely to burn with extreme rapidity . . .

(a) Typical material contents. . . fuel or other oils having a flash point under 200F (tag closed cup) . . .”; and

WHEREAS, the consultant believes that the flash point of diesel fuel used in the Building is between 100 degrees Fahrenheit, based upon the flash point listed on a Material Safety Data Sheet for diesel fuel submitted into the record by DOB, and possibly 124 degrees, based upon his own knowledge; and

WHEREAS, the consultant explains that the flash point is the temperature at which a combustible substance such as diesel fuel begins to emit vapors that could ignite if it travels to a potential ignition source; and

WHEREAS, the consultant notes that the flash point is certainly less than the 200 degree point referenced in Building Code § 27-243; and

WHEREAS, thus, the consultant concludes that the storage of diesel fuel must be considered a Class A occupancy; and

WHEREAS, the consultant contends that a Class A high hazard occupancy is not allowed in a non-combustible structure such as the Building without full sprinkler protection, pursuant to Table 4-1 of the Building Code; and

WHEREAS, the consultant also argues that Class A occupancies must be protected by four-hour rated enclosures rather than the two-hour rated enclosures provided for by the Variance; and

WHEREAS, the consultant also expressed concern about the potential spillage and ignition of diesel fuel, especially during the manual transfer process; and

WHEREAS, finally, the consultant also expressed concern about the leakage of fuel from the piping connecting the day tanks to the generators; and

WHEREAS, in sum, the consultant makes four arguments: (1) the classification of the tank and generator enclosures should be Class A, High Hazard; (2) neither the sprinkler system or the enclosure fire-rating meets Building Code requirements for a Class A occupancy; (3) the flash point of diesel fuel could be as low as 100 degrees, which makes it inappropriate for manual transfer; and (4) that fuel in the piping from the tank enclosure to the generator could leak and pose a danger; and

WHEREAS, in response to the classification issue, DOB submitted a letter from its Deputy Commissioner for Technical Affairs, dated August 30, 2006; and

WHEREAS, the Deputy Commissioner explains that neither the Building nor the storage of diesel fuel therein is a high hazard occupancy under the Building Code, because the fuel tanks are not a stand-alone occupancy; and

WHEREAS, rather, the tanks and generator systems, like other accessory storage tanks and generators in other buildings, are classified as mechanical spaces, which are D-2 occupancies; and

WHEREAS, the Deputy Commissioner cites to Table 3-2 of the Building Code, which classifies as D-2 occupancies

mechanical and electrical equipment rooms, power plants, and certain boiler and furnace rooms; and

WHEREAS, the Board agrees that this establishes that the mere presence of a fuel tank and generator within a space in a building does not mean that the space is a Class A occupancy; and

WHEREAS, the Board also observes that in a list of proposed occupancy codes for various activities set forth in the Building Code’s Reference Standards (RS 3-3), certain uses that would be classified as Class A occupancies if one accepted the consultant’s argument are instead placed in a different classification; and

WHEREAS, for instance, RS 3-3 provides that “Fuel Sales” establishments, open or closed, of 5,000 sq. ft. or less, are Class E (business) occupancies, not Class A, in spite of the reasonable conclusion that tanks of fuel are present at such establishments so that fuel can be sold; and

WHEREAS, thus, the Board agrees that the accessory day tanks used in conjunction with the emergency generators are not a primary occupancy nor a high hazard occupancy, but are, as DOB states, accessory D-2 occupancies that are permitted as of right within the Building; and

WHEREAS, further, the Board observes that both the fire rating of the enclosures and the sprinkler system comply with the D-2 occupancy requirements; and

WHEREAS, as to the safety of diesel fuel generally, the Owner submitted letters from its two experts that address this concern; and

WHEREAS, specifically, in a letter dated September 19, 2006, Dr. Milke explains that the flash point of low sulfur diesel fuel is in excess of 125 degrees Fahrenheit; and

WHEREAS, Dr. Milke explains that protection measures as specified in national codes, if implemented, provide an acceptable level of safety for diesel fuel generators; and

WHEREAS, Dr. Milke then highlighted the specific measures present within the Building, including the redundant sprinklers, the “tank within a tank design” of the day tanks, and heat and smoke detectors, that comport with such national codes; and

WHEREAS, additionally, in a letter dated September 19, 2006, Highland Associates cited to the leak detection system that alarms locally within the tenant offices and at the Building’s Fire Command Station; and

WHEREAS, the Board agrees that diesel fuel may be safely handled at temperatures above the flash point; and

WHEREAS, the Board further agrees that all of the additional safety measures cited by the Building’s experts mitigate any danger related to the manual transfer of fuel, and the storage of fuel in day tanks; and

WHEREAS, specifically, the Board cites to the requirement that all individuals manually transferring fuel possess the FDNY certificate, the requirement that spill containment measures are in place and the requirement that the transfer path be fully sprinklered; and

WHEREAS, further, as noted above, the Board agrees that the enclosures as contemplated by the Variance, along with the other provisions and conditions, provide at least equal safety as full compliance with 27-829 on the Affected Floors; and

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WHEREAS, the Board notes that the flash point of the diesel fuel is not specific to the Affected Floors but relates to any tank and generator systems within the Building; and

WHEREAS, thus, any concern about the flash point relates not the specific variation of 27-829, but rather to Appellant's broad concern about diesel fuel in general; and

WHEREAS, the Board agrees with the Owner that the sprinkler system and other safety systems provide sufficient fire suppression in the event of a fire; and

WHEREAS, however, the Board notes that the heat detection and sprinkler heads within the generator enclosures are set at temperatures higher than 100 degrees; and

WHEREAS, the Board believes that in order to achieve maximum safety within the enclosure rooms, it is reasonable to require that the temperature within the rooms be maintained at less than 100 degrees; and

WHEREAS, a condition requiring the Owner to ensure that each generator enclosure remains under 100 degrees Fahrenheit: (1) addresses any concerns about the flash point of the diesel fuel, as raised by Appellant; and (2) provides an additional safety measure that enhances the overall safety within the Building; and

WHEREAS, accordingly, the Board will add the following condition to the Variance: "Within six months of October 17, 2006, a ventilation, climate control or other cooling system will be installed (if one does not exist already) in each generator enclosure room, and the temperature in each such enclosure room will be monitored and maintained at under 100 degree Fahrenheit"; and

Noise and Particulate

WHEREAS, Appellant argues that DOB failed to consider the effect the Variance would have on noise and particulate emissions; and

WHEREAS, DOB responds that no additional fuel will be burned as a result of the Variance as opposed to what would result from an as of right condition, and that the Variance in any event was not an "action" under State and City environmental rules; and

WHEREAS, DOB also notes that the Variance does not waive or vary compliance with any applicable law concerning particulate or noise emission; and

WHEREAS, in fact, one of the Variance conditions specifically provides that all generators installed on the roof or setback roofs shall meet the noise control requirements of the City's Noise Code; and

WHEREAS, finally, the Board observes that the number of tanks on the Affected Floors has no bearing on the amount of noise and particulate, since it is the generators that allegedly emit noise and particulate, not the tanks; and

WHEREAS, in sum, the Board agrees that noise and particulate issues are not relevant to the issue at hand, and are within the jurisdiction of other agencies; and

Additional Conditions

WHEREAS, as already noted, the Board agrees with DOB's determination that the Variance provides an equivalent amount of safety as full compliance with 27-829, and with its observation that the Variance provisions and conditions have the secondary effect of creating a greater overall level of fire safety

within the Building than an as of right condition; and

WHEREAS, although the Board disagrees that the Building or any of the uses within it are unsafe, it observes that the two additional measures the Board would like the Owner to undertake, if clarified as conditions in the Variance, will either further enhance the effect of making the Affected Floors even safer than required by the Building Code or modify the Variance to the extent that it would better comport with the final representations of the Owner made during the hearing process; and

PRACTICAL DIFFICULTIES AND SELF-CREATED HARDSHIP

WHEREAS, pursuant to City Charter § 645(b)(2), an applicant for a Building Code variance must establish that there is a "practical difficulty in complying strictly with the law relating to the use of prescribed materials, the installation or alteration or service equipment, or methods of construction"; and

WHEREAS, the Owner represented to DOB prior to the issuance of the Variance that the claim of practical difficulties is based upon the following: (1) the Affected Floors are leased by multiple tenants, who, in the aggregate, require more than one 275 gallon tank for their emergency power generation needs; (2) tenants on the same floor cannot be supported by one tank in any event since this would require a third-party entity to operate and manage that floor's specific fuel system, which would be objectionable to the tenants, given their individual lease agreements; and

WHEREAS, the Owner also argued that a basement pump system is infeasible because if it failed, a day tank could be depleted before maintenance workers could fix the pump, and power would be lost; and

WHEREAS, the Owner noted that having a header system from a single tank that would serve multiple generators on a floor would be more dangerous than multiple isolated day tanks because it would spread the fuel throughout the entire floor; and

WHEREAS, finally, the Owner's consultant submitted a report that noted that the generators themselves could not be relocated because there was no space in the basement or on the first floor for them, and also because there was insufficient space to construct access routes for enough power conduits to support the 7.6 megawatts of electrical power from the generators, or to construct access routes for control wiring to the generators to tenant spaces and tank rooms; and

WHEREAS, DOB acknowledges some of the above as a legitimate practical difficulty in the Variance, noting that the Affected Floors are shared by multiple tenants, each needing up to four hours of back-up power, for which 275 gallons is inadequate, and that space constraints make it operationally unfeasible to relocate the generators to other floors; and

WHEREAS, Appellant argues that: (1) no practical difficulty exists because the Owner and tenants could achieve the stated emergency power needs through alternative means that comply with the Building Code; and (2) any practical difficulty was self-created and should not be rewarded through a variance; and

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Alternate Means of Compliance

WHEREAS, subsequent to the first hearing, the Board asked DOB to discuss the possibility of alternative means of providing back-up power to the emergency generators; and

WHEREAS, DOB, in response, noted three different means: (1) hydrogen fuel cells; (2) natural gas; and (3) micro-turbine technology; and

WHEREAS, DOB stated that hydrogen cell technology, while permissible, is restricted to outdoor installation and is very bulky; and

WHEREAS, DOB stated that natural gas is not considered a safer alternative to the current use of diesel fuel; and

WHEREAS, finally, DOB stated that micro-turbine technology has not yet been approved; and

WHEREAS, the Board agrees that none of the alternative means are viable methods of addressing the Building's tenants emergency power needs, due to the Building's inability to accommodate the bulk of the means, the safety of such means, or the legality of such means; and

Self-created Hardship

WHEREAS, Appellant states that the claimed practical difficulty is self-created and therefore cannot be considered by DOB because: (a) the Variance legalizes illegal conditions; (b) the practical difficulty was known to the Owner at the time the tanks were installed on the Affected Floors; (c) the practical difficulties relate only to the business needs of the Owner; and

WHEREAS, first, Appellant contends that since the tanks on the Affected Floors were installed without permits, any variance issued to rectify this is necessarily arbitrary and capricious; and

WHEREAS, the Board disagrees, noting that neither Charter § 645(b)(2) nor Building Code § 27-107 prohibit a variance of code provision that would legalize existing conditions; and

WHEREAS, the Board also notes that Appellant does not cite to any authority that supports this contention; and

WHEREAS, second, Appellant argues that since the limitations of the Building were known to the Owner, any practical difficulty in complying with 27-829 is self-created; and

WHEREAS, again, neither Charter nor Building Code provide that knowledge of the condition negates the ability to seek or receive a Building Code variance, and authority for this proposition was not provided; and

WHEREAS, the Board observes that it has granted other Code variances based upon a practical difficulty that is plainly evident to the owner of the building at the time the variance is requested; and

WHEREAS, for instance, under BSA Cal. No. 383-03-A, the Board allowed the conversion of an office building to residential use without the provision of an atrium enclosure, contrary to a provision of the 1938 Building Code; and

WHEREAS, the lack of an atrium enclosure was obvious to the owner of the building in question when it pursued a variance of the Code provision; and

WHEREAS, likewise, under BSA Cal. No. 27-04-A, the Board allowed the establishment of a commercial use at Pier 94 without the provision of a covered exterior egress path, contrary to Building Code § 27-369(f); and

WHEREAS, again, the inability to cover the egress path was obvious to the owner of the property; and

WHEREAS, thus, knowledge of the condition that requires a Building Code waiver does not foreclose the ability to receive such waiver; and

WHEREAS, third, Appellant claims that practical difficulties cannot be based upon the business needs of the Owner or a desire to avoid unreasonable expense; and

WHEREAS, the Board disagrees, and again cites to Cal. No. 27-04-A; and

WHEREAS, in that case, the Board credited testimony from the owner that the provision of the atrium enclosure was cost-prohibitive and would diminish expected residential revenue; and

WHEREAS, the Board observes that the practical difficulty standard, in the context of a variation of the Building Code, is not the same standard as unnecessary hardship for a zoning variance under ZR § 72-21; and

WHEREAS, unlike a zoning variance, where physical uniqueness related to the parcel of land itself is usually required, the business needs of the owner of the premises and the existing built conditions can properly be considered, especially where, as here, such needs intersect with pre-existing physical constraints related to the building itself; and

WHEREAS, in fact, since a Building Code waiver will almost always relate to a proposed building form, construction method or a proposed occupancy, it is difficult to envision a practical difficulty that would not in some way relate to the particular needs of the building owner or business occupying the building; and

WHEREAS, thus, the Board finds that where compliance involves a practical engineering difficulty and imposes a related financial burden that is unnecessary in light of a sufficiently safe alternative, the Charter and Code provide DOB with authority to waive or modify compliance; and

WHEREAS, in conclusion, the Board disagrees that the practical difficulty claimed by the Owner constitutes an impermissible self-created hardship; and

Clarification of Practical Difficulties

WHEREAS, the Board recognizes the need to have a back-up power supply for generators that service important telecommunication equipment in case of power failure or other emergency; and

WHEREAS, nonetheless, during the hearing process the Board asked for further clarification of the evidence submitted by the Owner to DOB in support of the practical difficulty claim; and

WHEREAS, more specifically, the Board asked the Owner if the various generators in the Building could be centrally connected to a basement-fed tank systems via vertical risers and horizontal piping to the day tanks on all floors; and

WHEREAS, this would eliminate the need for the manual transfer of fuel and the 27-829 waiver; and

WHEREAS, at the Second Hearing, the Owner explained that due to the existing telecommunication and electric lines within the Building, and the fact that there are multiple tenancies within the Building that need a separate tank servicing a separate generator, running fuel lines from basement tanks (thereby

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limiting tanks to one per floor) is infeasible; and

WHEREAS, further, in its August 23, 2006 submission, the Owner submitted a letter to DOB dated May 3, 2006 from the Owner's counsel, which further explained the physical and logistical difficulties as to full compliance with 27-829; and

WHEREAS, this letter highlights the Owner's previous submissions to DOB as to practical difficulties, and cites to its engineering consultant's assessment of the infeasibility of compliance (also included in the August 23 submission); and

WHEREAS, the Board has reviewed the August 23 submission and the May 3 letter to DOB, as well as the supporting materials referenced therein, and agrees that it provides sufficient evidence of practical difficulty as to compliance with 27-829; and

LANDMARKS PRESERVATION COMMISSION REVIEW

WHEREAS, Appellant argues that DOB's issuance of the Variance was legally defective because LPC review and approval of the Variance was not obtained prior to its issuance; and

WHEREAS, Appellant cites to Administrative Code ("AC") § 25-203(a)(1), which provides in part that it shall be "unlawful to alter, reconstruct or demolish any improvement constituting a part of a landmark site unless [LPC] has issued a certificate of no effect, a certificate of [appropriateness] or a notice to proceed authorizing such work"; and

WHEREAS, at the outset, the Board observes that DOB's issuance of the Variance is not an alteration, reconstruction or demolition of the Building; rather, it is an exercise of its authority to waive 27-829; and

WHEREAS, thus, the Board disagrees that AC § 25-203(a)(1) prevents DOB from issuing the Variance without the Owner first obtaining LPC approval; and

WHEREAS, however, the Board observes that AC § 25-203(b)(1) provides in part "no application shall be approved and no permit or amended permit for the construction, reconstruction, alteration or demolition of any improvement located or to be located on a landmark site or in an historic district or containing an interior landmark shall be issued by the department of buildings . . . until the commission shall have issued either a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed pursuant to the provisions of this chapter as an authorization for such work."; and

WHEREAS, Appellant argues that the prohibition on issuance of a plan approval application or an actual building permit also acts as a prohibition on the issuance of a Building Code variance; and

WHEREAS, however, a Building Code variance issued by DOB is not the equivalent of the issuance of a plan approval application or a building permit; and

WHEREAS, subsequent to the issuance of the Variance, the Owner is still required to submit to DOB an application for approval of plans showing all work and installations contemplated under the Variance and to obtain permits for such work; and

WHEREAS, the Board observes that the Owner has submitted into the record LPC approvals for such installations and work, which is contrary to Appellant's argument that no

such approvals were obtained; and

WHEREAS, even assuming *arguendo* that Appellant is correct in its assertion that the work proposed under the Variance should have received LPC sign-off prior to formal issuance of the Variance, the Board considers the subsequent acquisition of required LPC approvals a sufficient cure, and invalidation of the Variance would not be indicated; and

WHEREAS, because the Board finds that DOB's issuance of the Variance did not constitute a violation of AC § 25-203(b)(1), the Board declines to make a determination upon DOB's argument that tanks that service emergency generators are not subject to LPC approval because they are exempt from LPC review, as per letters from LPC to DOB dated May 8, 1995 and October 27, 2005; and

BULK OIL FUEL PLANT REGULATIONS

WHEREAS, Appellant argues that the Variance was improperly issued because the Building meets the definition of "Bulk Oil Fuel Plant" (hereinafter, "BOFP"), as set forth at Section § 27-4002(31) of the City's Fire Prevention Code (hereinafter, "27-4002"); and

WHEREAS, 27-4002 provides that a BOFP is "a building, shed, enclosure or premises, or any portion thereof, in which petroleum or coal tar, or the liquid products thereof, are stored or kept for sale in large quantities."; and

WHEREAS, pursuant to Fire Prevention Code § 27-4053(b)(3), a BOFP is not permitted within 1,000 feet of a school, subway entrance/exit or subway ventilation shafts; and

WHEREAS, pursuant to Fire Prevention Code § 27-4053(c)(2), a BOFP is not permitted within 250 ft. of a public park or a residential zone; and

WHEREAS, Appellant argues that the Building violates both of these provisions, and cites to subway entrances, schools, parks, and residential buildings near the Building in support of this argument; and

WHEREAS, DOB disagrees that the Building is a BOFP, and states that neither it nor FDNY has applied the BOFP definition to UG 6, Occupancy Group E buildings such as the Building; and

WHEREAS, DOB submitted a letter from the FDNY, dated July 1, 2004, in support of this statement; and

WHEREAS, in this letter, then-FDNY Chief of Fire Protection James Jackson states that the BOFP definition is inapplicable to the fuel storage at the Building; and

WHEREAS, additionally, at the Second Hearing, Chief McNally stated that he conducted a site visit and concluded that the Building was not a BOFP; and

WHEREAS, Chief McNally noted that BOFPs are very large operations that store fuel in amounts that exceed normal Building Code requirements; and

WHEREAS, instead, Chief McNally noted that the amount of fuel stored there was consistent with other Class E office buildings; and

WHEREAS, DOB argues that it and FDNY only apply the BOFP definition to certain industrial facilities or utilities where fuel is stored or kept for sale in quantities in excess of Building Code limitations; and

WHEREAS, again, Chief McNally's statement at the

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Second Hearing confirms this; and

WHEREAS, Chief McNally also stated that some facilities do not actually meet the BOFP definition, but FDNY imposes the certificate requirement anyway and the facility cooperates; and

WHEREAS, DOB notes precedent that establishes that where the administrative agency charged with administration and enforcement of a particular provision (here, FDNY) has historically and consistently applied an interpretation of a provision, deference must be given to that provision; and

WHEREAS, Appellant argues that the phrase “for sale” in the BOFP definition only modifies the word “kept” and not the word “stored”, and cites to various cases that establish that when the word “or” is used, it indicates that the language that follows is to be construed in an alternative sense; and

WHEREAS, since the BOFP definition is less than clear, the Board asked Appellant to research the legislative history of the BOFP definition; and

WHEREAS, the results of Appellant’s legislative history research were inconclusive, and did not illuminate what types of facilities would fall under the definition; and

WHEREAS, the Board also asked DOB to provide a list of all facilities within the City where a Certificate of Fitness for a supervisor of a BOFP was issued (this certificate is a different type of certificate of fitness from that required of individuals handling the manual transfer of fuel pursuant to the Variance); and

WHEREAS, DOB provided a list of such facilities, and noted that the majority of them are facilities where fuel or oil is kept or stored for sale; and

WHEREAS, such facilities include gas and oil company depots and industrial terminals; and

WHEREAS, the remainder are facilities that technically did not meet the BOFP definition as applied by FDNY because fuel stored there was not for sale, but where a certificate of fitness was required nonetheless given the type of facility and the amount of fuel stored; and

WHEREAS, such facilities include power stations, certain government facilities, and dry docks; and

WHEREAS, the Board has considered all of the arguments made by both Appellant and DOB, and concludes that DOB’s position is correct; and

WHEREAS, first, the Board notes that Appellant does not provide the Board with an interpretation that can be applied in a consistent and rational manner; and

WHEREAS, Appellant does not state how much fuel or oil has to be stored within a building for it to meet the “in large quantities” phrase in the BOFP definition; and

WHEREAS, as noted above, Chief McNally observed the tanks within the Building and determined that the amount of fuel in the basement (where the great majority of fuel is stored) is consistent with other similarly-sized buildings; and

WHEREAS, further, the Board observes that there are many other buildings within the City that are as large or significantly larger than the Building; and

WHEREAS, if the mere presence of a significant (but Building Code-compliant) quantity of fuel in such buildings is enough to appropriately categorize the building as a BOFP

– even where such fuel is stored below-grade – then it very likely that numerous office, hotel, residential, and institutional buildings are in violation of the 1000 ft. and 250 ft. rules set forth in the Fire Prevention Code; and

WHEREAS, further, no such building, if categorized as a BOFP, could ever be connected to a public drain or sewer, pursuant to Fire Prevention Code § 27-4053(c); and

WHEREAS, obviously, Appellant’s amorphous interpretation would lead to absurd results, which is contrary to a basic canon of statutory interpretation; and

WHEREAS, further, the Board observes that Appellant’s interpretation relies upon the word “or” as an absolute boundary line between the word “stored” and “kept for sale”, but ignores the word “or” as to the phrase “in large quantities”; and

WHEREAS, the Board finds this inconsistent: if the word “or” separates the word “stored” from the phrase “kept for sale”, then it should also separate “stored” from the remainder of the definition; and

WHEREAS, the Board notes that no commas or other punctuation marks are used in the provision that would indicate that the phrase “in large quantities” modifies both the word “stored” and the phrase “kept for sale”; and

WHEREAS, thus, under Appellant’s interpretation, the word “stored” would not be modified by “in large quantities”, but would instead stand alone; and

WHEREAS, however, the mere storage of any quantity of fuel or oil, large or small, obviously does not compel application of the BOFP definition; and

WHEREAS, thus, the Board finds Appellant’s reliance on the cited precedents related to the work “or” is selectively, and therefore inappropriately, applied; and

WHEREAS, at most, Appellant’s interpretation points out the fact that the provision is not particularly well-drafted; and

WHEREAS, the Board further observes that the BOFP definition and the distance provisions should be read in the context of all of the provisions related to BOFPs in the Fire Prevention Code, as suggested by one of the Owner’s consultants in a letter dated June 24, 2004; and

WHEREAS, the Board observes that these provisions obviously were enacted in contemplation of the large-scale storage of fuel by facilities of the type set forth on the DOB list; and

WHEREAS, for instance, Fire Prevention Code § 27-4053(b)(2)(A) references 50,000 gallon tanks, § 27-4053(b)(2)(B) references 200,000 gallon tanks, and § 27-4053(b)(3)(B) references tanks of up to six million gallons in capacity; and

WHEREAS, other provisions reference above-ground tanks (§27-4053(b)(3)), tank foundations (§27-4053(b)(9)), and other installations obviously indicative of an industrial facility or utility, not a Class E building; and

WHEREAS, finally, the Board notes that the list of facilities where a certificate of fitness requirement was imposed either because the facility was a BOFP or because it was deemed by FDNY to be prudent to impose the requirement does not appear to include any Class E office

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buildings; and

WHEREAS, in conclusion, the Board finds that Appellant's interpretation is so inappropriately ill-defined that it would provide no guidance whatsoever as to what types of buildings qualify as BOFPs; and

WHEREAS, further, Appellant's interpretation is also contrary to the statutory canons that provide that administrative agency interpretations are entitled to significant deference, that provisions should not be applied in a manner that would lead to absurd results and that provision should be read in harmony with other similar provisions; and

WHEREAS, the Board concludes that the Building is not a BOFP; and

FUEL IN PIPES AND HEADERS AND TANKS ON THE GROUND FLOOR

WHEREAS, Appellant argues that the Variance is infirm because: (1) it fails to take into consideration fuel within pipes and headers; and (2) it fails to take into account the multiple tanks on the ground floor of the building; and

WHEREAS, as to the first argument, Appellant's consultant argues that the 275 gallon limit per floor that is allowed as of right includes fuel in associated piping and headers; and

WHEREAS, DOB responds, and the Board agrees, that this requirement is part of Local Law 26, which was enacted in 2004, and that it is not a retroactive requirement that applies to the Building; and

WHEREAS, as to the second argument, another of Appellant's consultants contends in a letter dated August 13, 2006 that the Building has both a cellar and a sub-cellar and that the sub-cellar is the lowest story in the building; and

WHEREAS, the consultant contends that subsection (b)(1) of 27-829 specifically addresses tanks located inside of a building above the lowest story, which would include all tanks in the alleged cellar and first floor levels, since the word "story" is a defined term in the Building Code and includes sub-cellars; and

WHEREAS, the consultant concludes that DOB should have reviewed the cellar and first floor tanks when it issued the Variance, since these levels are above the lowest story (the sub-cellar); and

WHEREAS, first, the Board notes that the Building's certificate of occupancy indicates only a basement, not a cellar and sub-cellar; and

WHEREAS, further, DOB cites to the above-mentioned letter from DOB's Deputy Commissioner, dated August 30, 2006; and

WHEREAS, the Deputy Commissioner notes that 27-289(b)(1) uses the term "lowest story" while 27-289(b)(2) uses the term "lowest floor"; and

WHEREAS, the Deputy Commissioner notes that since 27-289 is inconsistent in its terminology, DOB applies an interpretation of the provision that best effectuates its purpose; and

WHEREAS, DOB states that it understands that the provision is designed to limit the amount of fuel above-grade (i.e. above the first or ground floor) in order to mitigate risk to firefighters and to enable easy access; and

WHEREAS, thus, DOB reads the provision to mean that the lowest floor or story is at grade; here, that is the first floor; and

WHEREAS, Building Code § 27-829(b)(1) and (2), as set forth in the Building Code, reads as follows (underlining added for emphasis):

"b) Inside of building above the lowest floor.

(1) Fuel oil storage tanks having a capacity of two hundred seventy-five gallons or less may be installed inside of buildings above the lowest story when provided with a four inch thick concrete or masonry curb, or with a metal pan of gauge equal to the gauge of the tank, completely surrounding the tank and of sufficient height to contain two times the capacity of the tank. The number of such oil storage tanks shall be limited to one per story.
(2) Storage tanks having a capacity of two hundred seventy-five gallons or less, installed above the lowest floor inside a building shall be filled by means of a transfer pump supplied from a primary storage tank located and installed as otherwise required by this subchapter. A separate transfer pump and piping circuit shall be provided for each storage tank installed above the lowest floor. No intermediate pumping stations shall be provided between the storage tank and the transfer pump. Appropriate devices shall be provided for the automatic and manual starting and stopping of the transfer pumps so as to prevent the overflow of oil from these storage tanks."; and

WHEREAS, the Board agrees that these provisions, when read in their entirety, are inconsistent due to their interchangeable use of the words "story" and "floor"; and

WHEREAS, the Board also agrees that DOB appropriately applies an interpretation that effects the purpose of the provision; and

WHEREAS, finally, the Board notes that Appellant's consultant's interpretation would mean that only single fuel tanks with a 275 gallon maximum capacity would be permitted on any sub-cellar, cellar, basement, first floor, or above-grade level that is above another sub-cellar level; and

WHEREAS, the Board observes that such an interpretation is at odds with other parts of 27-829, such as subdivision (a), which addresses the location of tanks inside of buildings, above ground on the lowest floor, and subdivision (c), which addresses the location of tanks inside of buildings, below ground; and

WHEREAS, neither of these provisions refer to any restriction that the existence of a sub-cellar might have on above ground, lowest floor installations or below ground basement or cellar installations; and

WHEREAS, further, Appellant's consultant has not proffered any rationale as to why the existence of a sub-cellar (if one exists) should negate the ability to install tanks in a cellar or a basement level, as these provisions allow; and

WHEREAS, for the above reasons, the Board finds Appellant's consultant's argument unpersuasive; and

ADDITIONAL ARGUMENTS

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WHEREAS, the following additional arguments were made either by Appellant or other parties: (1) the Board inappropriately conducted a site visit of certain portions of the Building without informing Appellant in advance or permitting Appellant to attend; (2) the total amount of fuel in the Building is being misrepresented by the Owner, as evidenced by documents generated by the State Department of Environmental Conservation; (3) the degree of the waiver is extreme and not in alignment with the Board's grants in the zoning variance context; (4) there is no comparability between the Building and others in the City; and (5) floor plans of the Affected Floor submitted by the Owner should not be kept confidential as per the Owner's request; and

Site Visit

WHEREAS, Board members and certain staff conducted a site visit of the Building on the afternoon of September 11, 2006; and

WHEREAS, the site visit was conducted pursuant to City Charter § 667 and the Board's Rules of Practice and Procedure § 1-03(d), which provide the authority for such visits; and

WHEREAS, the site visit was conducted in order to physically observe and confirm information already submitted into the record; and

WHEREAS, the visit was mentioned at the public hearing the following day in accordance with the prior plan of the Chair, and was the subject of a detailed site visit report prepared and distributed to the parties approximately one week after the visit; and

WHEREAS, the Board notes that none of its determinations herein rely upon or even cite to the site visit or the report, since nothing was observed on the site visit that was not already present in the record or that was not subsequently provided at hearing or through submissions; and

WHEREAS, the Board further notes that no deliberation amongst Board members occurred during the site visit, and that no determinations were made; and

WHEREAS, the site visit and report was also briefly discussed at the review session conducted on October 16, 2006, where it was confirmed by Board members that the report reflects what transpired on the site visit; and

WHEREAS, Appellant argues that the site visit was impermissible on the following grounds: (1) Appellant's due process rights were violated; and (2) the State's Open Meetings Law (the "OML") was violated; and

WHEREAS, as reflected above, the Board is not relying upon the site visit in rendering its decision on the instant appeal, and, through the report, disclosed to Appellant in detail what was observed and stated during the visit well in advance of Appellant's scheduled submission date of October 3, 2006 (which the Board notes was extended at the request of Appellant until October 12, 2006); and

WHEREAS, accordingly, the Board finds Appellant's concerns about due process unwarranted, especially in light of the three full special hearings that the Board conducted over the course of the public hearing process, which lasted nine months; and

WHEREAS, the Board notes that the City Charter and

the Board's Rules provide it with the authority to conduct site visits, and further notes that neither the Charter nor the Rules contains any requirement that parties must be informed in advance or invited; and

WHEREAS, additionally, the Board is aware that site visits conducted by zoning boards are not violations of the OML (see Niagra Mohawk Power Corp. v. Public Service Commission, 54 A.D.2d 225 (1976); City of New Rochelle v. Public Service Commission, 150 A.D.2d 441 (1989); and Committee on Open Government Opinions OML-AO-2272, OML-AO-2578, OML-AO-3179, and OML-AO-3560); and

WHEREAS, finally, the precedent cited by Appellant in support of its OML argument (Rent Stabilization Ass'n of N. Y. C. Inc. v. Rent Guidelines Bd. for City of New York, 98 Misc.2d 312, 413 N.Y.S.2d 950 (N.Y.Sup. 1978)) is not on point; and

WHEREAS, in that case, the court considered the failure to notice and conduct a public hearing for which notice was required under the OML; and

WHEREAS, here, the Board did not conduct a public hearing, but rather went on a site visit; and

WHEREAS, Appellant also argues that the site visit report constitutes hearsay evidence because it was prepared by the Board's counsel; and

WHEREAS, assuming without conceding that the site visit report constitutes hearsay evidence, the Board nevertheless finds this argument irrelevant since hearsay is generally permissible before zoning boards and since the Board is not bound by rules of evidence applicable in courts of law; and

WHEREAS, further, the report was written based solely upon the input of those Board members and staff present at the site visit, and the Board concurred at the final review session that the report reflected what occurred on the visit; and

WHEREAS, accordingly, the Board rejects all of Appellant's arguments as to the site visit; and

DEC Documents

WHEREAS, during the course of the hearing process, Appellant argued that certain DEC documents appeared to contradict the Owner's assertions about the total amount of tanks and gallon capacity within the Building; and

WHEREAS, specifically, in its June 1, 2006 submission to the Board, Appellant alleges that certain DEC documents (attached as exhibits to the submission) establish that there are tanks larger than 275 gallons above grade not disclosed by the Owner and not considered by DOB; and

WHEREAS, the referenced DEC documents consist of spread sheets that reflect certain tanks within the Building and their capacity and DEC web-site print outs that reflect the same information; and

WHEREAS, based upon these documents, Appellant suggests that the Owner is failing to disclose to DOB and the Board additional tanks that may violate 27-829; and

WHEREAS, the Board suggested to the Appellant that it research with DEC the relevance of these documents and report back to the Board; and

WHEREAS, the Board also asked the Owner to address

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the DEC documents; and

WHEREAS, subsequently, Appellant reported to the Board that DEC would not discuss the documents, and suggested that the Board contact DEC itself; and

WHEREAS, however, the Board observes that the Owner, in its August 23, 2006 submission, explained that DEC ascribed certain basement tanks to tenants on upper floors such that it appeared the tanks were actually located on the upper floors when in fact they were not; and

WHEREAS, the Owner explained that this occurred because DEC uses the mailing addressees of the tenants, which includes the floor number; and

WHEREAS, further, the Owner noted that not all tanks within the Building are subject to DEC regulation, due to their size; and

WHEREAS, the Board finds this explanation credible, and further observes that the Variance does not exempt the Owner and the tenants from compliance with all applicable state regulations, including those administered and enforced by DEC; and

WHEREAS, accordingly, the Board finds that further discussion or deliberation upon the DEC documents is unnecessary; and

The Degree of the Variance

WHEREAS, Council Member Gerson alleges that the Variance, which allows at least double the amount of permitted tanks on each of the Affected Floors, represents far more of a waiver than this Board would ever allow when considering a zoning variance application for floor area; and

WHEREAS, however, the Board observes that Building Code waivers, whether granted by DOB or the Board, are fundamentally different than zoning variances granted pursuant to Section 72-21 of the Zoning Resolution; and

WHEREAS, the Board notes that there is no explicit minimum variance requirement for a Building Code waiver, as there is for a zoning variance; and

WHEREAS, further, there is no evidence in the record suggesting that the Owner asked for more relief from 27-829 than was needed; and

WHEREAS, the fact that other floors aside from the Affected Floors possess generators connected by risers and pipes to tanks in the basement reinforces that the waiver of 27-829 was only requested to allow tanks on floors where practical difficulties prevented compliance with this Building Code section; and

WHEREAS, finally, the total amount of fuel stored above the first floor of the Building is actually less than is permitted as of right, which supports the contention that the Variance addresses precisely the existing practical difficulties within the Building, and is not over-reaching in any respect; and

WHEREAS, accordingly, the Board finds this argument unpersuasive; and

The Uniqueness of the Building

WHEREAS, during the course of the hearing process, the Board asked questions related to the following: (1) whether any other building had received a waiver of 27-829; (2) whether other buildings stored fuel above grade in day

tanks; and (3) whether other buildings stored a comparable amount of fuel in total; and

WHEREAS, as to the first question, DOB acknowledges that this is most likely the first time that it has granted a waiver of 27-829; and

WHEREAS, however, the Board fails to see any significance in this fact, since there is no requirement in the Charter or the Building Code that DOB may only grant a variance of a provision if it granted one before; and

WHEREAS, as to the second question, while neither DOB nor the Appellant could provide an example of another building with above-grade fuel storage, the Board notes that the Building Code expressly allows for such storage as of right, and, depending on the amount of stories in a particular building, much more fuel could be stored as of right in a Class E building than is stored in the Building; and

WHEREAS, further, the Board notes that it did not direct Appellant's expert to ask DEC about comparable facilities to the Building, even though it appears that this is what Appellant subsequently did; and

WHEREAS, instead, the Board asked that Appellant's expert substantiate his claims that there were no other office buildings within the City where comparable quantities of fuel were stored, both below and above grade; this request was separate and apart from the request related to the DEC documents; and

WHEREAS, in sum, the Board concludes that the lack of specific examples of other buildings with above-grade storage in the record is irrelevant; and

WHEREAS, as to the third question, as noted above, FDNY inspected the Building and concluded that the amount of fuel in it is normal for a Class E building of its size; and

WHEREAS, the Board also notes that the use of commercial buildings for telecommunications occupancy is not uncommon in the City, and further notes that a neighbor who appeared in opposition to this appeal submitted a list of other buildings within the City occupied primarily by telecommunications companies; and

WHEREAS, in sum, the Board is now satisfied that the apparent singularity of the Building in terms of the Variance is not in of itself a concern and that the particular uses within the Building are found in other comparable facilities; and

Floor Plans

WHEREAS, in its final submission, the Owner submitted floor plans of the Affected Floors, and asked that the Board keep the plans confidential; and

WHEREAS, the Owner argues that the plans should not be made part of the public record because of security concerns; and

WHEREAS, however, Appellant requested that its attorneys, its experts, and its executive board have the ability to review the plans; and

WHEREAS, specifically, in a letter dated September 22, 2006, Appellant asked that the board officers (five individuals), Appellant's experts (three individuals) and Appellant's attorneys (three individuals) be allowed to review the plans; and

WHEREAS, at that point, Board staff became aware

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that Appellant had received a full set of the plans in question already; and

WHEREAS, subsequent to this request, Board staff communicated with one of Appellant's attorneys and indicated that the plans could be disseminated and reviewed by the individuals identified in the September 22, 2006 letter, with the understanding that they would be kept confidential and not be more widely distributed; and

WHEREAS, at that juncture, Appellant's attorney sent a draft confidentiality agreement to Board staff that was proposed to be executed by the identified individuals; and

WHEREAS, Appellant's final submission indicates that the plans were in fact reviewed; and

WHEREAS, however, instead of including an executed confidentiality agreement, the Appellant argued that the Board should make the plans public and not keep them confidential, pursuant to the Freedom of Information Law ("FOIL"); and

WHEREAS, Appellant also argues that the Owner's desire to keep the plans confidential undercuts any argument that the Building is safe, with or without the Variance; and

WHEREAS, the Board finds that it is unnecessary to resolve the issue of whether the plans should be kept confidential pursuant to an exemption under FOIL in order to render a determination on the instant appeal, since Appellant's attorneys, experts, and executive board have had the opportunity to review the plans and comment upon them, based upon the Board staff's communication of this ability to Appellant's attorney and as evidenced by the Appellant's last submission; and

WHEREAS, further, the Board disagrees that a desire to keep the floor plans confidential is fundamentally at odds with a general conclusion that the Building is safe; and

WHEREAS, Appellant has not offered any explanation for its position in this regard; and

WHEREAS, the Board is aware that the plans for certain buildings within the City are kept confidential by DOB; and

WHEREAS, this does not mean that the buildings are unsafe or that they do not comply with the Building Code or achieve the safety goals of the Building Code, rather, it is a general security matter, related to the importance of particular buildings in general; and

WHEREAS, further, as explained by the Owner in a submission dated October 13, 2006, DOB restricts access to certain building's plans, application and filings due to security considerations, including those related to the Building; and

WHEREAS, finally, the Board notes that to the extent a formal FOIL request is made for the plans, such request will be considered in light of all provisions of FOIL, and any denial of such a request may be challenged in accordance with existing law; and

CONCLUSION

WHEREAS, in sum, the Board is not persuaded that any of the arguments made by Appellant or other parties as discussed above have any merit or require the nullification of the Variance; and

WHEREAS, accordingly, it upholds DOB's issuance of the Variance, with modifications as set forth below.

Therefore it is Resolved that: (1) the instant appeal, seeking a reversal of the determination of the Commissioner of the Department of Buildings, dated June 27, 2005, is hereby denied, and (2) that the determination is modified pursuant to City Charter § 666(7)(c) to the extent that the following conditions shall be added:

"There shall be no storage of excess fuel in 55 gallon drums in the basement or anywhere else within the building;

Within six months of October 17, 2006, a ventilation, climate control or other cooling system will be installed (if one does not exist already) in each generator enclosure room, and the temperature in each such enclosure room will be monitored and maintained at under 100 degree Fahrenheit"; and to the extent that the part of condition no. 4 in the determination that reads: "Excess fuel may be stored in the basement in an approved area or storage room but only to the extent of one 55-gallon drum per generator whose fuel tank is manually filled" shall have no effect.

Adopted by the Board of Standards and Appeals, October 17, 2006.

69-06-BZY

APPLICANT – Stuart A. Klein, for SMJB Associates, LLC, owner.

SUBJECT – Application April 19, 2006 – Proposed extension of time to complete construction of a minor development pursuant to ZR 11-331 for a six-story mixed use building. Prior zoning R-6. New zoning district is R5-B as of April 5, 2006.

PREMISES AFFECTED – 1599 East 15th Street, northeast corner of East 15th Street and Avenue P, Block 6762, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Madeleine Fletcher.

For Administration: Amandus Derr, Department of Buildings.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS, a public hearing was held on this application on September 19, 2006 after due notice by publication in *The City Record*, and then to closure and decision on October 17, 2006; and

WHEREAS, the site was inspected by a committee of the Board including Chair Srinivasan; and

WHEREAS, Community Board 14, Brooklyn,

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recommends approval of this application; and

WHEREAS, the subject premises consists of one lot on the northeast corner of East 15th Street and Avenue P; and

WHEREAS, the subject premises is located within an R5B zoning district; and

WHEREAS, the subject premises is proposed to be developed with a six-story community facility building; and

WHEREAS, however, on April 5, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to enact the Midwood rezoning proposal, which changed the zoning district from R6 to R5B, rendering the development non-complying as to FAR and height; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, ZR § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of Minor Development; and

WHEREAS, the applicant represents that the relevant Department of Buildings' permit was lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that on November 25, 2005 a new building permit (Permit No. 301898114, hereinafter, the "NB Permit") for the new building was lawfully issued to the applicant by the Department of Buildings; the permit was renewed on April 5, 2006; and

WHEREAS, the Board has reviewed the record and agrees that the NB Permit was lawfully issued to the owner of the subject premises; and

WHEREAS, the applicant represents that because the Metropolitan Transit Authority (MTA) railroad tracks are located within 24 feet of the subject premises, MTA approval was required before construction could begin; and

WHEREAS, MTA approval was obtained on November 30, 2005; and

WHEREAS, the applicant represents that MTA required extensive modification of the foundation plan and required additional measures during excavation and demolition including supplemental concrete footings; and

WHEREAS, the applicant represents that, as of the Rezoning Date, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, the applicant represents that shoring and underpinning of the adjacent property began on March 3, 2006; and

WHEREAS, after an inspection by an MTA engineer, the underpinning was completed on March 17, 2006; and

WHEREAS, the applicant represents that approximately 75 percent of the foundation was completed by March 24, 2006; and

HEREAS, the applicant submitted photographs in support of this assertion and notes that the MTA shoring plan required that the excavated foundation be partially backfilled to allow the special drilling machine to maneuver; and

HEREAS, the applicant represents that complications with the special drilling device delayed drilling; however, it was recommenced on April 4, 2006; and

WHEREAS, the applicant represents that, by April 5, 2006, approximately 85 percent of the foundation had been completed; and

WHEREAS, in support of the contention that the specified amount of work has been completed, the applicant has submitted affidavits from a representative of the construction company that performed the foundation work, the construction manager, two of the owners, the site engineer, and a representative of the construction company that performed the demolition and excavation documenting the status of said completion; and

WHEREAS, the applicant has also submitted photographs of the site and a color-coded copy of the foundation plan depicting the extent of work done on the foundation; the latter is signed and sealed by a professional architect; and

WHEREAS, in support of the contention that 209.65 cubic yards of concrete were poured between March 2 and March 22, 2006, the applicant has submitted pour tickets from a concrete batching company, reflecting the claimed amount of concrete pours; and

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WHEREAS, the applicant represents that the only remaining work on the foundation is the additional shoring required by the MTA on the east side of the property; and

WHEREAS, the applicant has submitted a “work-performed” table detailing the amount of work that has been completed; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables that indicate that more than 75 percent of the cost of completing the foundation had been incurred as of the Rezoning Date; and

WHEREAS, at hearing, the Board asked the applicant if any work was completed during periods when a stop work order (SWO) was in effect; and

WHEREAS, the applicant responded that no work was performed when an SWO was in effect, other than the stabilization of the overhead railroad as required by the MTA and DOB; and

WHEREAS, however, DOB states that it issued three violations which included SWOs; and

WHEREAS, these SWOs were issued on the following dates: 1) March 28, 2006 for failure to protect adjoining structures during excavation (effective until March 31, 2006); 2) April 3, 2006 for operation of mechanical equipment in an unsafe manner (this remains in effect); and 3) April 7, 2006 in response to the rezoning; and

WHEREAS, therefore, the Board has not considered the work performed between March 28 and March 31, 2006 or after April 3, 2006; and

WHEREAS, however, after reviewing the affidavits and the other evidence submitted, the Board agrees with the conclusion that at least 75 percent of foundation work was lawfully completed as of April 3, 2006; and

WHEREAS, the Board finds all of above-mentioned submitted evidence sufficient and credible; and

WHEREAS, accordingly, the Board finds that excavation was complete and that substantial progress had been made on the foundation, and additionally, that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is resolved that this application to renew New Building permit No. 301898114 pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on April 17, 2007.

Adopted by the Board of Standards and Appeals, October 17, 2006.

91-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Deborah & John Vesey, lessee.
SUBJECT – Application May 9, 2006 - Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of a mapped street (Beach 211th Street), and the upgrade of an existing private

disposal located within the bed of a mapped street and service lane (Lincoln /Marion Service Road) is contrary to Section 35, General City Law and Buildings Department Policy. Premises is located within an R4 Zoning District
PREMISES AFFECTED – 38 Lincoln Walk, west side Lincoln Walk 120.5’ north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 24, 2006, acting on Department of Buildings Application No. 402270573, reads in pertinent part:

“A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A2- The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on October 17, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated May 17, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated June 12, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated July 31, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated April 24, 2006, acting on Department of Buildings Application No. 402270573 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 9, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the

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Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

101-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Jennifer & Peter Frank, owners.
SUBJECT –Application May 23, 2006– roposed reconstruction and enlargement of an existing single family dwelling located in the bed of a mapped street contrary to Section 35, Article 3 of the General City Law and the upgrade of an existing private disposal system located within the bed of mapped street contrary to Section 35, Article 3 of the General City Law. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 35 Market Street, north side Rockaway Point Boulevard at intersection of mapped Beach 202nd Street, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 5, 2006, acting on Department of Buildings Application No. 402366211, reads in pertinent part:

“A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A2- The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on October 17, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated June 9, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated June 9, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated September 12, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 5, 2006, acting on Department of Buildings Application No. 402366211 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 23, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

179-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Maria Danzilo & Richard Lehv, lessee.

SUBJECT – Application August 17, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting a mapped street which is contrary to Article 3, Section 36 of the General City Law. Premises is located within the R 4 zoning district.

PREMISES AFFECTED – 11 Beach 220th Street, east side Beach 220th Street, 249.72’ north of 4th Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

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Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 11, 2006, acting on Department of Buildings Application No. 402428556, reads in pertinent part:

- “A1- The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, Therefore:
- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
 - b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on October 17, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated May 17, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 11, 2006, acting on Department of Buildings Application No. 402428556 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 17, 2006” one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

63-06-A

APPLICANT – Sheldon Lobel, P.C.,
OWNERS: Kevin and Alix O’Mara
SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to

an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jay Segal.

For Opposition: Margerie Perlmutter

For Administration: Felicia Miller, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for decision, hearing closed.

81-06-A

APPLICANT – Whitney Schmidt, Esq.

OWNERS: Kevin and Alix O’Mara

SUBJECT – Application May 2, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Whitney Schmidt.

For Opposition: Margerie Perlmutter.

For Administration: Felicia Miller, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for decision, hearing closed.

120-06-A

APPLICANT – Eric Palatnik, P.C., for Harry & Brigitte Schalchter, owners.

SUBJECT – Application June 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Current zoning district is R4-1

PREMISES AFFECTED – 1427 East 17th Street, between Avenue N and Avenue O, Block 6755, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Felicia Miller, Department of Buildings.

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THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 31,
2006, at 10 A.M., for decision, hearing closed.

154-06-A

APPLICANT – Cozen O’Connor Attorneys, Flan Realty,
LLC, owner.

SUBJECT – Application July 12, 2006 - An appeal seeking a
determination that the owner of said premises has acquired a
common law vested right to continue development
commenced under the prior R6 zoning district. Premises is
located in a R6B zoning district.

PREMISES AFFECTED – 357 15th Street, north side of 15th
Street, between 7th and 8th Avenues, Block 1102, Lot 70,
Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

For Administration: Amandus Derr, Department of Buildings.

ACTION OF THE BOARD – Laid over to November
14, 2006, at 10 A.M., for continue hearing.

155-06-A

APPLICANT – Cozen O’Connor Attorneys, Flan Realty,
LLC, owner.

SUBJECT – Application July 12, 2006 – An appeal seeking
a determination that the owner of said premises has acquired
a common law vested right to continue development
commenced under the prior R6 zoning district. Premises is
located in a R6B zoning district.

PREMISES AFFECTED – 359 15th Street, north side of 15th
Street, between 7th and 8th Avenues, Block 1102, Lot 70,
Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

For Administration: Amandus Derr, Department of Buildings.

ACTION OF THE BOARD – Laid over to November
14, 2006, at 10 A.M., for continue hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 1:00 P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 17, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.

ZONING CALENDAR

290-02-BZ thru 314-02-BZ

374-03-BZ thru 376-03-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for
Edgewater Development, Inc., owner. (Taipei Court)

SUBJECT – Application October 24, 2002 – under Z.R. §72-
21 – to permit the construction of 28 attached, three-story and
cellar, two-family dwellings on a vacant site. The subject site
is located in an M1-1 zoning district. The proposal would
create 56 dwelling units and 56 parking spaces. The 28
proposed dwellings are intended to be part of a larger and
substantially complete development which is located within
the adjacent C3 zoning district. The proposed project has
been designed to conform and comply with the C3 district
regulations that govern the remainder of the subject property
and which permits residential development in accordance
with the C3 district’s equivalent R3-2 zoning district
regulations (pursuant to Sections 32-11 and 34-112). The
development as a whole is the subject of a homeowners’
association that will govern maintenance of the common
areas, including the parking area, driveways, planted areas
and the proposed park. The proposal is contrary to applicable
use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-01/03/05/07/09/11/13/17/
19/15/21/21/23/25/27/29/31/33/35/20/22/24/26/28/30/32/34
Taipei Court, west of 115th Street, Block 4019, Lot 120,
Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

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For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 24, 2002, acting on Department of Buildings Application No. 401208135, reads in pertinent part:

“Proposed residence (UG2) in an M1-1 zoning district is contrary to Section 42-10 ZR and must be referred to the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a zoning lot partially located within an M1-1 zoning district and partially located within a C3 zoning district, the construction of 28 three-story two-family homes on the M1-1 portion of the lot, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 11, 2006, after due notice by publication in the *City Record*, with continued hearings on June 6, 2006, July 18, 2006, August 22, 2006, and September 26, 2006, and then to decision on October 17, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 7, Queens, initially opposed this application in February of 2003, but in a further report from August of 2006, now supports it because the M1-1 portion is landlocked; and

WHEREAS, the subject premises is a large zoning lot, part of which is underwater, located in the College Point neighborhood of Queens; the site is located on the west side of 115th Street in Queens and is adjacent to the East River; and

WHEREAS, the total lot area (based on the upland portion of the lot) is 496,604 sq. ft.; and

WHEREAS, 352,279 sq. ft. of the site is within the C3 portion of the zoning lot and 144,325 sq. ft. is within the M1-1 portion; and

WHEREAS, the M1-1 portion is currently vacant; and

WHEREAS, the M1-1 portion does not have either direct frontage or access to 115th Street: it borders the East River to the west, and is adjacent to the C3 portions of the site to the north and east; and

WHEREAS, the part of the C3 portion of the zoning lot adjacent and directly to the east of the M1-1 portion is currently developed with 31 two-family homes (hereinafter, “Taipei Court”); and

WHEREAS, another part of the C3 portion of the lot to the north of the M1-1 portion is currently developed with 58 two-family homes (hereinafter, “Dalian Court”); and

WHEREAS, the Board notes that residential development is as of right in a C3 zoning district; this district has an R3-2

residential district equivalency; and

WHEREAS, the applicant notes that an additional lot adjacent to and to the southeast of the site (Lot 60) will be purchased by the developer and developed as a park area, open to the public; and

WHEREAS, as discussed in more detail below, when this application was initially filed, the applicant only presented to the Board the M1-1 portion, and did not discuss the entire zoning lot in terms of unique physical hardship, the feasibility of conforming development or environmental assessment; and

WHEREAS, at the direction of the Board, the applicant subsequently modified the application and the related materials to consider the entire zoning lot; and

WHEREAS, on the M1-1 portion, the applicant proposes to construct 28 three-story two-family homes with cellars, with 56 accessory parking spaces (one for each dwelling unit) and 12 visitor parking spaces (for a total of 68 parking spaces); and

WHEREAS, this development is proposed to be part of the existing Taipei Court project, and a homeowner’s association will govern the entire development; and

WHEREAS, access for the 28 proposed homes to and from 115th Street will be provided through that part of the Taipei Court project within the C3 district; and

WHEREAS, each of the proposed homes will be on a separate tax lot and each will have a separate street address; and

WHEREAS, each home will be 20 ft. wide by 40 ft. deep, with a total floor area of 2,400 sq. ft.; and

WHEREAS, the combined floor area of all 28 homes is 67,200 sq. ft. (a Floor Area Ratio of 0.47); and

WHEREAS, all other bulk parameters, such as yards, building height, and lot coverage, will comply with C3 district regulations; and

WHEREAS, additionally, the development will comply with the requirements for sidewalks, curbs, street width, planting, and open space set forth in the Special Requirements for Developments with Private Roads regulations (ZR § 26-20, *et seq.*); and

WHEREAS, the applicant also notes that the development has received approval from the State Department of Environmental Conservation (DEC) as required due to its proximity to a tidal wetland; and

WHEREAS, this approval requires substantial planting along the East River bank and installation of a four feet high fence; and

WHEREAS, the applicant further notes that the proposed development complies with the Special Waterfront zoning regulations (set forth at ZR § 62-00, *et seq.*) and will provide the required visual corridor, to be approved by the City Planning Commission (CPC); and

WHEREAS, finally, the applicant states that after the application was filed in 2002, the Department of City Planning (DCP) proposed a rezoning of the College Point neighborhood, and it was anticipated that the M1-1 portion would be rezoned to C3; however, this did not occur, thus necessitating that the application be prosecuted; and

WHEREAS, the applicant initially stated that the

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following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with the applicable use regulations: (1) the M1-1 portion of the site is landlocked, and only has access through the C3 district portion; (2) the site is partly underwater, and the underwater lot area cannot be utilized; (3) the site has poor soil that would require piles installation; and (4) the site is within an existing tidal wetlands area as designated by DEC; and

WHEREAS, as to the first argument, the applicant claims that access to the M1-1 portion, which is landlocked, is not feasible given the existing Taipei Court residential development; and

WHEREAS, however, as noted above, the applicant's discussion of hardship initially only related to the M1-1 portion; and

WHEREAS, pursuant to ZR § 72-21(a), the analysis of unique physical conditions must relate to the entire zoning lot and not just a portion thereof; and

WHEREAS, the Board questioned whether the landlocked nature of the M1-1 portion in of itself caused any hardship, and noted that this impedes conforming development only because of the decision to commence and complete development of the C3 portion with residential uses, thereby limiting the ability to access the M1-1 portion; and

WHEREAS, accordingly, the Board asked the applicant to analyze the entire zoning lot as if it were undeveloped; and

WHEREAS, in response, the applicant states that even when considering the entire zoning lot, the presence of the district boundary line still compromises conforming development; and

WHEREAS, the applicant states that since access may only be gained through the C3 portion, any permitted manufacturing use would need to conform to both the M1-1 and C3 district regulations; and

WHEREAS, the applicant claims that the universe of such uses is limited to Use Group 14 "special services and facilities required for boating and related activities"; and

WHEREAS, the applicant claims that this use is not economically feasible, even if more than one such facility is built; and

WHEREAS, the Board agrees that the presence of the district boundary line and the M1-1 portion's lack of street frontage compromises the ability to develop the zoning lot with conforming uses in its entirety; and

WHEREAS, as to the second basis, the Board notes that any alleged hardship that arises due to a portion of the site being underwater is compensated for by a reduction in site value and an increase in sell out value (due to the waterfront proximity and views); and

WHEREAS, further, the Board notes that it has reviewed other variance applications involving waterfront properties, and it has not credited any argument that a hardship exists merely because a percentage of the total lot area is underwater; and

WHEREAS, thus, the Board rejects the applicant's second claimed basis of uniqueness; and

WHEREAS, as to the third basis, the applicant states that

the site was created through a landfill and is adjacent to the East River, and as a result has porous soil; and

WHEREAS, the applicant claims that because of this porous soil, a manufacturing building would have to be built on a piles foundation system, which would greatly increase construction costs; and

WHEREAS, the applicant claims that these costs could not be recouped from the anticipated rent for such a building; and

WHEREAS, as to the fourth basis, the applicant claims that the DEC approval requires installation of fencing and planting in order to protect the existing tidal wetlands area, which also increases overall development costs; and

WHEREAS, based upon the above, the Board finds that certain unique physical conditions inherent to the subject zoning lot, namely, the presence of an M1-1/C3 district boundary line and the M1-1 portion's lack of street access, the site's soil conditions, and the DEC-imposed requirements, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable use regulation; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenario: a conforming one-story manufacturing/commercial building on the M1-1 portion; and

WHEREAS, the applicant concluded that such a scenario would result in a loss; and

WHEREAS, however, the Board notes that this study incorrectly assumed that only the M1-1 portion of the site needed to be analyzed; and

WHEREAS, accordingly, during the hearing process, the Board required the applicant to revise the feasibility analysis to encompass the entire zoning lot; and

WHEREAS, in a further submission, the applicant provided an analysis of a new conforming scenario; specifically, development of the entire zoning lot with a one-story manufacturing/commercial building on the M1-1 portion and 63 three-story, two-family buildings on the C3 portion; and

WHEREAS, however, this revised study failed to take into account the M1-1 zoning; instead, it valued the entire zoning lot as if it were zoned for as-of-right residential use, using only residentially zoned comparables for the valuation; and

WHEREAS, the Board noted that this error impermissibly overstated the value of the site; and

WHEREAS, in response, the applicant submitted a revised study, which accurately valued the zoning lot based upon both residential and manufacturing comparables; and

WHEREAS, finally, the Board observes that while the conforming scenario presented a building that was under-built in terms of floor area, a full build out for a UG 14 use would not make economic sense, leaving a smaller development as the only reasonable alternative; and

WHEREAS, given that the M1-1 portion of the site would be under-built, the Board concurs that a conforming scenario over the entire zoning lot would not realize a reasonable return; and

WHEREAS, based upon the above, the Board has

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determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to the proposed residential use, the Board observes that the subject site is adjacent to existing residential uses (Dalian Court and the first component of Taipei Court), and is surrounded by zoning districts where residential use is permitted; and

WHEREAS, the Board finds that the introduction of 56 dwelling units in this neighborhood will not affect its existing residential character; and

WHEREAS, as to the proposed bulk, the Board notes that the development is designed to be compatible with the existing Dalian and Taipei Court developments, and that the bulk over the entire zoning lot in all respects complies with C3 regulations; and

WHEREAS, finally, at the request of the Board, the applicant revised the parking layout so that each dwelling unit will have one accessory parking space and twelve visitor spaces will be provided; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather the result of the above-mentioned unique physical conditions inherent to the entire zoning lot; and

WHEREAS, in addition to analyzing the above-mentioned conforming scenario and the proposal, the applicant also analyzed the following lesser variance scenario: development of the M1-1 portion with a manufacturing building, and development of the C3 portion with 120 three-story, single-family homes; and

WHEREAS, upon its initial review of this lesser-variance scenario, the Board questioned whether the inclusion of cellars in each of the proposed buildings contributed to the overall development costs and exacerbated the degree of alleged hardship; and

WHEREAS, the applicant responded that due the poor soil conditions and the need to install piles, construction of cellars did not impose a significant additional economic burden as to the cost of construction; and

WHEREAS, additionally, the Board noted that the sell-out values ascribed the single-family homes appeared to be low, and asked the applicant to make an upwards adjustment to these values; and

WHEREAS, in response, the applicant made such an adjustment, but still concluded that a single-family proposal

would not realize a reasonable return, because only the revenue from the two-family development scenario would create sufficient income to overcome foundation and DEC-related costs and make the project feasible; and

WHEREAS, accordingly, the Board finds that the instant proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 03BSA066Q, dated February 9, 2004; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a lot partially located within an M1-1 zoning district and partially located within a C3 zoning district, the construction of 28 three-story two-family homes on the M1-1 portion of the lot, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 5, 2006"-(8) sheets; and *on further condition*:

THAT approval of the waterfront view corridor will be obtained from CPC prior to issuance of any building permit;

THAT all fencing and planting as required by DEC and as indicated on the BSA-approved plans shall be installed and maintained;

THAT accessory and visitor parking shall be provided as indicated on the BSA-approved plans;

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THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

291-05-BZ

APPLICANT – Eric Palatnik, P.C. for Rallaele DelliGatti, owner.

SUBJECT – Application September 22, 2005 – Pursuant to ZR 72-21 for a Variance to allow for the demolition of an existing single family residence and its re-development with a new single family residence which has less than the required front yard, ZR 23-45. The premise is located in an R-2A zoning district.

PREMISES AFFECTED - 10-33 Burton Street, Burton Street between 12th Avenue and 12th Road, Block 4607, Lot 26, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 402171555, reads in pertinent part:

“1. Proposed front yard is contrary to Section 23-45.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2A zoning district, the proposed construction of a two-story with cellar single-family home that does not provide one of the two front yards required for a corner lot, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on August 15, 2006 after due notice by publication in *The City Record*, to continued hearing on September 26, 2006, and then to decision on October 17, 2006; and

WHEREAS, Community Board 12, Queens, and the Borough President recommend approval of this application; and

WHEREAS, the site and surrounding area had a site and

neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the site is on the east side of Burton Street, at the corner of Burton Street and 12th Avenue; Burton Street forms a dead end at 12th Avenue; and

WHEREAS, the site has a lot area of 4,861.5 sq. ft., with a width of 45.89 ft. and a depth of 105.94 ft.; and

WHEREAS, the applicant states that the lot has existed in its present configuration since before 1961; and

WHEREAS, the site is currently occupied with a two-story single-family home, which the applicant represents dates back to the early 1900’s; and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story single-family home, with one off-street parking space; and

WHEREAS, the proposed home will have a perimeter wall height of 20.92 ft., a total height of 32.44 ft., a floor area of 2,422.2 sq. ft., an FAR of 0.5, one side yard of 5 ft., one side yard of 30.67 ft., and one parking space; and

WHEREAS, the proposed home complies with all R2A zoning district regulations except required front yards; and

WHEREAS, specifically, one front yard of 8.92 ft. along 12th Avenue and one front yard of 24.75 ft. along Burton Street are proposed (two 15 ft. front yards are the minimum required); and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: 1) the narrow width of the lot in combination with its location as a corner lot would result in a home out of character with the established context of homes in the surrounding area; and 2) the obsolescence and underbuilt character of the existing 100-year-old home; and

WHEREAS, as to lot width and corner location, the applicant reviewed 40 lots occupied by 39 homes within the three-block area bounded by Utopia Parkway, 166th Street, 12th Avenue, and 12th Road; and

WHEREAS, the applicant represents that of the 40 lots, 32 have widths greater than 46 feet (the width of the subject lot); and

WHEREAS, of the eight lots that are 46 feet in width or narrower, only two other lots are corner lots; and

WHEREAS, the applicant asserts that due to the size and corner location of the lot, a home built in compliance with front yard regulations would be narrow in width; and

WHEREAS, specifically, the applicant represents that the redevelopment of the site would restrict the width of the home to approximately 27 feet; and

WHEREAS, the applicant submitted plans for an as of right development which support this assertion; and

WHEREAS, the applicant notes that a home of only 27 feet would confine the width of the living room, dining room, and bedrooms and result in a uniquely narrow home in relation to those in the immediate vicinity; and

WHEREAS, the applicant notes that 26 of the 39 homes

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in the study area have a building width greater than 33 feet (the approximate width of the proposed home) and that of the 13 homes with narrower widths, only ten have a width of 30 feet or less; and

WHEREAS, the Board notes that of the 39 homes within the study area, only three have widths of 27 feet or narrower; and

WHEREAS, as to obsolescence, the applicant claims that the existing 100-year-old 1,302.78 sq. ft. home is very small and does not meet modern standards of habitability; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions, when considered in the aggregate, create practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that a complying 24.75 ft. front yard will be provided along Burton Street where the front of the home will be located and where there is a context for complying front yards; and

WHEREAS, the applicant notes that the existing home has a legally non-complying front yard along 12th Avenue where Burton Street ends; and

WHEREAS, the applicant states that the proposed front yard along 12th Avenue is 2'-4" greater than the existing one; the existing front yard is 6.62 feet and the proposed yard is 8.92 feet; and

WHEREAS, the applicant further states that the proposed front yard along 12th Avenue is similar in depth to those provided by the other corner properties on Burton and Totten Streets, with frontage on 12th Avenue; and

WHEREAS, there is also a fence at the end of Burton Street, which blocks pedestrian and vehicle access to 12th Avenue; and

WHEREAS, because Burton Street is blocked and does not connect to 12th Avenue, there is no context for front yards along this portion of 12th Avenue where the front yard waiver is proposed; and

WHEREAS, the applicant represents that there are at least three non-complying front yards of the six corner lots fronting on 12th Avenue within the study area; and

WHEREAS, the applicant submitted photographs and land use maps that support the above representations; and

WHEREAS, additionally, as discussed above, the proposed home is comparable in width to the homes within the immediate vicinity and is within the 0.5 FAR permitted in the R2A zoning district; and

WHEREAS, the Board also notes that the absence of one complying front yard will not negatively impact the adjacent uses as the proposed home will provide a complying 5 ft. side

yard along the property line of the residence to the south and a complying 30.67 ft. side yard at the rear of the home along the property line of the residence to the east; and

WHEREAS, the Board also agrees that the location of the home on the lot is consistent with the context along 12th Avenue, as there is a fenced off dead end along 12th Avenue with parking on the other side; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, as noted above, the applicant complies with all R2A zoning district regulations except for one required front yard; and

WHEREAS, initially, the applicant submitted plans for a home positioned further towards the north, which provided a narrower front yard along 12th Avenue; and

WHEREAS, at hearing, the Board asked the applicant if the home could be positioned further towards the south so that a slightly deeper front yard could be provided along 12th Avenue as well as a complying side yard; and

WHEREAS, in response, the applicant submitted revised plans which provide for a front yard along 12th Avenue that is 1'-7" deeper than the one initially proposed; and

WHEREAS, the Board also notes that the currently proposed front yard along 12th Avenue is 2'-4" deeper than the existing non-complying front yard; and

WHEREAS, additionally, the Board notes that the dimensions of the proposed home, including the width of approximately 33 feet, are comparable to those of the existing home; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, within an R2A zoning district, the proposed construction of a two-story with cellar single-family home that does not provide one of the two required front yards for a corner lot, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 12, 2006"- (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.5; a floor area of 2,422.2 sq. ft.; one front yard of 8.92 ft., along 12th Avenue; one front yard of

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24.75 ft., along Burton Street; one side yard of 5 ft.; and one side yard of 30.67 ft.;

THAT one off-street parking space shall be provided as indicated on the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

338-05-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application November 25, 2005 – Special Permit Z.R. §73-622 to permit the proposed enlargement of an existing single family home which creates non-compliances with respect to open space and floor area, Z.R. §23-141, less than the required side yards, Z.R. § 23-461 and less than the required rear yard, Z.R. §23-47.

PREMISES AFFECTED – 2224 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7374, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 14, 2006, acting on Department of Buildings Application No. 302057002, reads, in pertinent part:

- “1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio which is contrary to ZR Section 54-31 and 23-141(b).
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space and coverage which is contrary to ZR Section 54-31 and 23-141(b).
3. Proposed enlargement results in two side yards

less than 5 feet and the total of both side yards less than 13 feet, contrary to ZR Section 23-461(a).

4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47 and 54-31.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-461, 23-47, and 54-31; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, with continued hearings on August 8, 2006 and September 19, 2006, and then to decision on October 17, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighbors provided testimony in support of this application; and

WHEREAS, however, certain neighbors provided testimony in opposition to this application citing concerns about access to light and air and the preservation of the character of the block; and

WHEREAS, the subject lot is located on the west side of East 14th Street, between Avenue V and Gravesend Neck Road; and

WHEREAS, the subject lot has a total lot area of 2,500 sq. ft., and is occupied by a 1,086 sq. ft. (0.434 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,086 sq. ft. (0.434 FAR) to 2,600.09 sq. ft. (1.04 FAR); the maximum floor area permitted is 2,250 sq. ft. (0.90 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 46 percent to 55 percent (the maximum permitted lot coverage is 45 percent) and reduce the open space from 1,350 sq. ft. to 1,120.03 sq. ft. (the minimum required open space is 1,375 sq. ft.); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards of 3’-9 ½” and 2’-10 ¼” (side yards totaling 13’-0” are required with a minimum width of 5’-0” for one); and

WHEREAS, the proposed enlargement will maintain the non-complying 6’-6” front yard (a minimum front yard of 10’-0” is required); and

WHEREAS, the proposed enlargement will reduce the

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rear yard from 34'-0" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, both the proposed perimeter wall height of 21'-0" and the total height of 31'-0" comply with district regulations; and

WHEREAS, initially, the applicant proposed a building with a perimeter wall height of 25'-0" and a total height of 35'-0"; and

WHEREAS, at hearing the Board asked the applicant to establish a context for the proposed height; and

WHEREAS, the applicant submitted a streetscape which illustrates that the street is occupied primarily with older one-story bungalows and a small number of newer two- and three story homes; and

WHEREAS, the applicant also submitted photographs of buildings in the vicinity and information about their bulk parameters; and

WHEREAS, the Board notes that buildings in the general vicinity include large multiple-unit dwellings and a number of two- and three-story homes; and

WHEREAS, however, in consideration of the context of the subject block, the Board asked the applicant to reduce the height; and

WHEREAS, specifically, the Board suggested that the floor to ceiling height of the second floor be reduced from 16 feet; and

WHEREAS, the applicant revised the plans to show a second floor height of 12'-4 1/2", which resulted in the total height being reduced from 35'-0" to 31'-0"; and

WHEREAS, the Board notes that the as-of-right enlargements of nearby homes have resulted in homes with 21 ft. wall heights and 31 ft. total heights, with the exception of one with a height of 35 feet; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, the Board also notes that the lot is within an R4 zoning district and that the FAR request is reasonable, given that an FAR of 0.9 is permitted as of right; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board also asked the applicant to clearly indicate which portions of the existing building were being maintained; and

WHEREAS, the applicant represents that the foundation and first floor side walls, and the first floor will be retained; and

WHEREAS, the applicant submitted revised drawings highlighting which sections of the foundation, walls, and

floors would remain; and

WHEREAS, additionally, the Board asked the applicant to remove the parking area from the plans; and

WHEREAS, Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for FAR, floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-461, 23-47, and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 5, 2006"-(10) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall be used for household storage only;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,600.9 sq. ft., a total FAR of 1.04, a perimeter wall height of 21'-0", and a total height of 31'-0", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets A2, A3, A4, A5-1, and A6, stamped September 5, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT the front porch shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief

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granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

344-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Cornerstore Residence, LLC, owner.

SUBJECT – Application December 2, 2006 – Variance pursuant to Z.R. §72-21 to permit the construction of a two-family dwelling that does not permit one of the two front yards required for a corner lot. The premise is located in an R4 zoning district. The proposal requests a waiver of Z.R. Section 23-45 relating to the front yard.

PREMISES AFFECTED – 109-70 153rd Street, a/k/a 150-09 Brinkerhoff Avenue, northwest corner of 153rd Street and 110th Avenue, Block 12142, Lot 21, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 7, 2005, acting on Department of Buildings Application No. 402156279, reads in pertinent part:

“1. Proposed front yard is contrary to Section 23-45 of the Zoning Resolution and requires a variance from the Board of Standards and Appeals.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the proposed construction of a two-story with cellar two-family home that does not provide one of the two front yards required for a corner lot, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on September 19, 2006 after due notice by publication in *The City Record*, and then to decision on October 17, 2006; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan; and

WHEREAS, the site is on the northwest corner of 153rd Street and 110th Avenue; and

WHEREAS, the lot is 25.7 ft. in width along 153rd Street, and 100 ft. in depth along 110th Avenue, with a total area of 2,570 sq. ft.; and

WHEREAS, the applicant states that the lot has existed in its present configuration since prior to 1961; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant represents that available records indicate that the site was formerly improved upon with a building constructed around 1926; and

WHEREAS, this building was demolished pursuant to a 1984 Unsafe Building violation and a 1985 demolition application; and

WHEREAS, the applicant proposes to construct a two-story, two-family home with two off-street parking spaces; and

WHEREAS, the proposed home will be 27'-5" high with two stories and have a total floor area of 2,312.07 sq. ft., a total FAR of 0.9, one side yard of 20'-2", one side yard of 5'-0", and two parking spaces; and

WHEREAS, the proposed home complies with all R4 zoning district regulations except required front yards; and

WHEREAS, specifically, one front yard of 2 ft. and one front yard of 18 ft. are proposed (one front yard of 10 ft. and one front yard of 18 ft. are required); and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject corner lot is narrow, which is in part the result of the widening of 110th Avenue; and

WHEREAS, the applicant claims that the subject lot is the narrowest corner lot of the nine corner lots within a 200-ft. radius; and

WHEREAS, further, the applicant represents that the subject lot is the only vacant corner lot wholly within the radius; there is another vacant lot just beyond the radius, which has a width of 100 feet; and

WHEREAS, the applicant has submitted a 200-ft. radius diagram that supports these assertions; and

WHEREAS, the applicant also submitted a Sandborn map that includes five intersections along 153rd Street between 109th Drive and 111th Road; and

WHEREAS, the map includes 18 corner lots of which only two are narrower than the subject lot; and

WHEREAS, the map shows that there are no other vacant corner lots within this extended study area other than the large one at the corner of 153rd Street and 110th Road, discussed above; and

WHEREAS, the applicant represents that the requested front yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing dimensions of the lot - 25.7 ft. wide and 100 ft. deep – cannot feasibly accommodate as of right development; and

WHEREAS, in support of this statement, the applicant

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submitted plans for a complying building, which would have an exterior width of only 10.7 ft. if front yard regulations were complied with fully; and

WHEREAS, the applicant represents that the narrow width of the lot is the result of a street widening of 110th Avenue; and

WHEREAS, the applicant notes that 110th Avenue was only 50 ft. wide at the time the prior dwelling at the site was constructed; and

WHEREAS, however, the subsequent street widening significantly reduced the width of the subject lot; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a home of a reasonable width, while still providing a side yard that would provide sufficient distance between the proposed home and the neighboring home to the north; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that a complying 18 ft. front yard will be provided along 153rd Street, which has a residential context; and

WHEREAS, further, the applicant states that a second front yard of 2 ft. will be provided along 110th Avenue, which has a commercial context; and

WHEREAS, the applicant notes that the adjacent site along 110th Avenue, the sites around the corner on Sutphin Boulevard, and the entire block across 110th Avenue are in either C2-2 (R4) or C1-2 (R3-2) zoning districts that do not have a front yard requirement; and

WHEREAS, the applicant represents that many of the existing buildings in the surrounding area were developed prior to 1961 when the current yard regulations were enacted and, thus, many of them have non-complying yards; and

WHEREAS, the applicant submitted photographs, Sandborn maps, and the radius diagram, which supports the above representations; and

WHEREAS, the Board notes that the non-complying front yard will not negatively impact the adjacent use to the west along 110th Avenue (a gasoline service station); and

WHEREAS, the Board agrees that the location of the home on the lot and the non-complying front yard are consistent with the context along 110th Avenue, a commercial district which permits and is occupied by a number of buildings built to the front lot line; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent

properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions and street widening; and

WHEREAS, as noted above, the applicant complies with all R4 zoning district regulations except for one of the required front yards; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, within an R4 zoning district, the proposed construction of a two-story with cellar two-family home that does not provide one of the two required front yards for a corner lot, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 2, 2005"- (4) sheets and "October 4, 2006"- (1) sheet ; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.9; a floor area of 2,312.07 sq. ft.; 1,413.97 sq. ft. of open space; one front yard of 2 ft., one front yard of 18 ft., one side yard of 20'-2", and one side yard of 5 ft.;

THAT two off-street parking spaces shall be provided as indicated on the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.

SUBJECT – Application December 22, 2005 – Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling

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containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to Z.R. §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 29, 2006, acting on Department of Buildings Application No. 500740665, reads in pertinent part:

“Proposed floor area is contrary ZR 23-141

Proposed building height is contrary to ZR 23-631

Proposed width of driveway is contrary to ZR 25-622

Proposed width of curb cut is contrary to ZR 25-632”;

and

WHEREAS, this is an application under ZR § 72-21, to permit within an R3-2 zoning district within the Special Hillside Preservation District (HS), the construction of a three-story, 40 ft. high 25-unit Use Group 2 multiple dwelling for adults age 55 and over, with a floor area of 24,542 sq. ft., a Floor Area Ratio (FAR) of 0.95 and 38 accessory parking spaces, which does not comply with zoning requirements for total and residential floor area, street wall height, total height, and curb cut and driveway width, contrary to ZR §§ 23-141, 23-631, 25-622 and 25-632; and

WHEREAS, initially, the applicant proposed a four-story, 55 ft. high, 30-unit multiple dwelling with an FAR of 1.15 and 45 parking spaces, which would have required FAR, height, and dwelling unit waivers; and

WHEREAS, after the Board expressed concern about this proposal not reflecting the minimum variance, the applicant submitted an intermediate proposal; and

WHEREAS, the intermediate proposal was for a three-story, 43-ft. high, 30-unit multiple dwelling, with an FAR of 0.95 and 45 parking spaces; and

WHEREAS, however, this proposal, in addition to requiring FAR, height and dwelling unit waivers, also required waivers for open space, rear yard, distance between windows and rear lot line, and proposed balconies; and

WHEREAS, the Board expressed the same concern about the proposal not reflecting the minimum variance, and suggested that the newly proposed waivers be eliminated; and

WHEREAS, subsequently, the applicant revised the proposal to the current version; and

WHEREAS, the Board notes that the site was the subject of a prior BSA application, brought under Cal. No. 387-04-BZ; and

WHEREAS, this application proposed a new UG 6 retail development, and was ultimately withdrawn; and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in the *City Record*, with continued hearings on June 13, 2006, August 8, 2006, September 12, 2006 and then to decision on October 17, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, initially, on February 14, 2006, Community Board 1, Staten Island, recommended disapproval of this application, alleging that the site did not suffer any hardship; and

WHEREAS, however, on April 11, 2006, the Community Board recommended approval of the application, based on its conclusion that as of right development would not be feasible, and with the condition that the site be deed restricted to occupancy by adults age 55 and over; and

WHEREAS, the Borough President and certain housing advocates also supported this application; and

WHEREAS, the Clove Lake Civic Association (“CLCA”) opposes this application; the reasons are discussed below; and

WHEREAS, the subject premises is a 25,260 sq. ft. trapezoidal shaped lot with 149.25 ft. of frontage along Clove Road and an average depth of approximately 246 ft.; and

WHEREAS, the site is bordered by Clove Road to the east, Clove Lakes Park to the west, dwellings and the Clove Way residential development to the south, and a part of a cemetery and a monument shop to the north; and

WHEREAS, Clove Road is a heavily traveled four-land arterial, and is designated by the City as a local truck route; and

WHEREAS, the site is currently developed with a vacant single-family residence, a vacant two-family residence (formerly occupied by a UG 6 florist), and several accessory structures, all of which are proposed to be demolished; and

WHEREAS, as noted above, the applicant proposes the construction of a three-story with cellar multiple dwelling for adults age 55 and over, with 38 accessory parking spaces and roof top recreation space; and

WHEREAS, the applicant states that the owner of the premises intends to limit the occupancy of the building through a deed restriction to adults age 55 and over in accordance with the Housing for Older Persons Act (“HOPA”), a federal program that allows for such older adult housing projects; and

WHEREAS, the Board notes that the applicant has voluntarily agreed that full HOPA compliance will be a condition of this grant; and

WHEREAS, additionally, the Board notes that an authorization pursuant to ZR § 119-312 from City Planning Commission is required prior to the issuance of any permit (due to the site location within the HS); and

WHEREAS, the non-complying bulk parameters of the proposed building are as follows: the residential floor area is 34,542 sq. ft. (the maximum permitted for a residential building is 21,816 sq. ft.); the residential FAR is 0.95 (0.50 is the

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maximum permitted, though this may be increased to 0.6 through the attic bonus); the wall height is 40 ft. (the maximum permitted is 21 ft.); the total building height is 40 ft. (the maximum permitted is 35 ft.); and the curb cut and driveway width is 24 ft. (the maximum permitted is 18 ft.); and

WHEREAS, the complying parameters are as follows: 25 dwelling units; a front yard of 15 ft.; side yards of 15 ft. and 76 ft.; a rear yard of 30 ft.; lot coverage of 31.67%; and 38 accessory parking spaces; and

WHEREAS, the applicant notes that total height calculation is based upon the adjusted base plane; and

WHEREAS, the applicant also notes that the proposed cellar is more than one half below grade, and is thus exempt from calculation as zoning floor area; and

WHEREAS, however, the Board will defer to DOB as to the status of the cellar; and

WHEREAS, while the proposed residential use is as of right, the above-mentioned bulk non-compliances necessitate the instant variance application; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site is approximately 603 feet away from the nearest sanitary and storm sewer line in Clove Road; and (2) the site is located adjacent to a cemetery and monument shop, and fronts on Clove Road, a heavily trafficked arterial roadway; and

WHEREAS, as to the first argument, the applicant claims that multiple engineering investigations establish that a sewer connection spanning a 603 ft. distance will be unusually expensive to construct, particularly when costs associated with addressing the existing utilities in the bed of Clove Road are calculated and included in the cost estimate; and

WHEREAS, the applicant states that additional FAR (and, consequently, a modest height waiver) is needed to overcome such premium costs; and

WHEREAS, the applicant further contends the subject site is the only large undeveloped parcel of land within one quarter of a mile that suffers from this hardship, and cites to a radius diagram in support of this contention; and

WHEREAS, however, the Board asked the applicant to provide more detailed testimony about this condition, and specifically asked that an explanation be provided of the increment in sewer-related costs between a typical large site on a private street that would need to connect to a sewer line versus the costs for this site; and

WHEREAS, in response, during the course of the hearing process, the applicant provided more detailed expert testimony in support of the argument that the sewer connection costs were both unusual and extraordinary; and

WHEREAS, specifically, at the August 8, 2006 hearing, three different sewer experts with experience in Staten Island development provided testimony, which, in sum and substance, established the following: (1) that generally developers seek to avoid sewer construction whenever possible due to the increased construction costs and the length of time such construction takes; (2) that such sewer construction occurs relatively

infrequently (in about ten percent of all major developments), but is most common on Staten Island; (3) that 603 ft. of sewer installation is roughly double the normal length typically seen in a development project of this size where a sewer connection is necessary; (4) that unusual time delays will result due to both Department of Transportation (DOT) restrictions regulating how long Clove Road can be partially closed during the sewer construction and the amount of sub-surface wiring and piping already in place in Clove Road that will have to be monitored and navigated while sewer line is installed; and (5) that unlike other projects involving sewer construction, no opportunity exists with the subject development to recoup construction costs by selling the right for other developments to tie into the newly constructed sewer line; and

WHEREAS, the applicant supported this testimony with further submissions; and

WHEREAS, first, as to the unusual distance between the site and the nearest available sewer connection point, the applicant noted that only five of the recent 151 Staten Island development projects that involved sewer connections required sewer placement in a public street, as proposed here; and

WHEREAS, the applicant then cited to a report documenting a per unit sewer cost comparison between other sewer connection projects and that proposed for the subject site, for an as of right project as the site; and

WHEREAS, this report establishes that the sewer costs attributable to each dwelling unit in the as of right development scheme result in a cost which is nearly three times larger than any other cited location; and

WHEREAS, the applicant also provided a table comparing the per dwelling unit of the proposed building to per dwelling unit sewer costs of other developments; and

WHEREAS, this table likewise establishes that the actual sewer-related costs associated with the proposed development (approximately \$526,000) are higher than every other cited location, aside from one development within an area that is more marketable for multi-million dollar dwellings (which can overcome sewer connection costs because of the high sell-out value); and

WHEREAS, second, as to the DOT restrictions, the applicant provided additional letters from the sewer experts, which further explicated the DOT stipulations as to construction within Clove Road; and

WHEREAS, one of the experts provided a letter listing the actual DOT stipulations, which generally address where and when work can be performed, and certain safety measures that much be undertaken; and

WHEREAS, this expert also provided a second letter, which clarified the impact that the stipulations would have on the sewer construction: the reduction of the productive workday to 3.5 hours and a decrease in general productivity due to the existence of in-ground utility lines, overhead wires, poles and trees; and

WHEREAS, this second letter concludes that more typical sewer construction projects have less time constraints, less encumbrances and fewer utility crossings, and therefore can be

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constructed more quickly and at a lower cost; and

WHEREAS, a second sewer expert also provided a letter, confirming that the DOT stipulations are more restrictive than those imposed in a typical sewer project; and

WHEREAS, finally, a third sewer expert also provided a letter that further confirmed that the DOT stipulations would increase construction time and overall costs; and

WHEREAS, third, the applicant provided evidence that since there are no other large undeveloped sites in proximity to the subject site, there is no opportunity to sell the right to connect to the proposed sewer line; and

WHEREAS, the Board has reviewed the voluminous expert testimony about the sewer connection and agrees that it establishes that: (1) sewer connection costs for development on the site are exacerbated by the long travel path between the site and the nearest access point to an existing sewer connection within Clove Road; (2) such costs also increase due to the restrictions placed on sewer construction by DOT, as well as the complications of the in-ground pipes and wires and above-ground poles and trees; and (3) unlike other sites, no opportunity exists here to recoup some of the sewer construction costs by selling the right to connect to the newly built sewer to other developments; and

WHEREAS, the Board also concurs that the site is unique in this regard, based upon a review of the submitted radius diagram, as well as the testimony of the three experts, which established that in their experience sewer construction of the type contemplated here is very rare; and

WHEREAS, accordingly, the Board finds that the increased sewer costs contribute to the need for an increase in floor area (and as a result, in the height of the building); and

WHEREAS, as to the second claimed basis of uniqueness (the locational difficulties), the applicant states that site fronts on Clove Road, and is adjacent to a cemetery's waste storage area and a monument shop; and

WHEREAS, the applicant states that the Environmental Assessment Statement submitted with the application establishes that traffic volumes on Clove Road include more than 1,000 vehicles passing the site during the morning and afternoon rush hour; and

WHEREAS, the EAS also indicates that residential development along such high intensity arterials typically consists of five to ten story apartment buildings; and

WHEREAS, the applicant concludes that the instant site, given its frontage on Clove Road, is not suitable for complying low density residential development; and

WHEREAS, the applicant also cites to a separate report from another consultant which establishes that the site is not conducive to residential development since Clove Road is a designated truck route; and

WHEREAS, as to the proximity to the cemetery's waste storage area and the monument shop, the applicant states that these adjacent uses create noise, which would compromise residential development; and

WHEREAS, the Board has reviewed this expert testimony, and agrees that the frontage on Clove Road, a busy arterial and

truck route, and the adjacency of the cemetery's waste storage area and a monument shop, compromises residential development; and

WHEREAS, the Board notes, however, that such difficulties contribute to need for FAR relief on a secondary basis; the primary hardship the site suffers is the premium costs related to sewer construction; and

WHEREAS, as to the curb cut and driveway waivers, the applicant states that since Clove Road is an arterial, the permitted maximum 18 ft. width is insufficient, and would compromise the maneuvering room for vehicles as they enter and exist the site; and

WHEREAS, the Board agrees that better ingress and egress is needed due to the number of proposed accessory spaces and notes that a wider curb cut and driveway will provide more efficient and safer vehicle access, given the heavy traffic on Clove Road; and

WHEREAS, based upon the above, the Board finds that the above-mentioned unique physical conditions inherent to the subject zoning lot, namely, the site's distance from a sewer connection and its location along Clove Road, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable use regulation; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenarios: (1) three two-family residences, utilizing a septic system (which would avoid infrastructure construction costs); (2) six single-family residences and four two-family residences (with a sewer and storm water connection); (3) a 22,400 sq. ft. medical facility; and (4) a not-for-profit senior housing development and

WHEREAS, this study concluded that none of these scenarios would result in a reasonable return; and

WHEREAS, however, the Board asked for clarification and amplification of this conclusion; and

WHEREAS, in response, the applicant submitted an additional study of the first two as-of-right proposals, prepared by a separate appraiser with experience in Staten Island; and

WHEREAS, this second study confirms the conclusions in the first study as to the residential development scenarios; and

WHEREAS, as to the not-for-profit senior housing development, the applicant states that there is no developer willing to undertake such a project; and

WHEREAS, finally, the applicant cited to the earlier feasibility analysis in support of the contention that an as of right medical facility would not realize a reasonable return; and

WHEREAS, in addition to clarification of the prior study, the Board also asked for an analysis of an as-of-right two-story garden apartment multiple dwelling; and

WHEREAS, in response, the applicant submitted a further study that concludes that such a scenario would not realize a reasonable return; and

WHEREAS, the applicant also provided the opinion of an independent architect, which establishes that the five as-of-right scenarios analyzed by the applicant illustrate the best development options for the site; and

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WHEREAS, finally, the Board notes that the premium sewer connection costs inputted into the various feasibility studies contemplating a sewer system were significantly lower than actual established costs, in order to be conservative; specifically, the inputted sewer connection cost is \$418,000 (as opposed to the actual cost of approximately \$526,000); and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant initially represented that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized by a mixture of low-density and larger residential buildings, as well as a significant amount of open and outdoor space; and

WHEREAS, further, as discussed in a submitted land use report, to the south of the site on Clove Road, there are two large non-complying ten-story multi-family residential buildings; and

WHEREAS, to the southeast of the site, along Clove Way, there are existing two-story residential buildings, approximately 25 to 30 ft. high; and

WHEREAS, the report indicates that the proposed site plan includes landscaped buffers varying from 25 to 30 ft. wide on all of the site's lot lines, including along the south side of the site by the two-story homes; and

WHEREAS, the report further indicates that the amount of accessory parking spaces (38) is more than sufficient for the amount of units and visitors; and

WHEREAS, the applicant, citing to this report, concluded that the building as first proposed would not create any impact on the character of the neighborhood or adjacent uses; and

WHEREAS, the Board observes that while the building envelope was later reduced in response to its concerns about the project reflecting the minimum variance, the applicant's conclusions about the proposal's impact on the character of the community remain valid; and

WHEREAS, additionally, during the course of the hearing process, the Board asked the applicant to clarify the total height, and noted that some of the height waiver appeared to be driven by a decorative element at the roofline; and

WHEREAS, it was suggested to the applicant that compliance with the applicable height requirement might be possible if this element was removed and if the floor to ceiling heights were reduced; and

WHEREAS, in a submission dated September 18, 2006, the applicant provided a revised proposal that eliminated the decorative element and reduced the floor to ceiling height; and

WHEREAS, however, the applicant notes that while the front total elevations of the building were reduced, which diminishes the visible height, the application of the adjusted base plan measurement results in an actual height that still requires a

small five ft. height waiver; and

WHEREAS, the Board finds that this waiver is acceptable, given the actual reduction is front elevation and total building height; and

WHEREAS, in sum, the Board observes that the current version of the proposed building reflects a lesser FAR and total height than that originally proposed, which is more consonant with the character of the neighborhood and which will not impact adjacent conforming uses; and

WHEREAS, the Board also notes that the wider curb-cut and driveway will enhance the safety of vehicular access to the site, and will not detract from the character of the neighborhood or impact adjacent uses; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, to eliminate any argument that the hardship related to the sewer connection was self-created because the owner of the site failed to attempt to connect to the sewer system present in the adjacent Clove Way Estates development, the applicant provided affidavits that establish that repeated inquiries and offers concerning connecting to Clove Way Estates were unsuccessful; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather the result of the above-mentioned unique physical conditions inherent to the subject zoning lot; and

WHEREAS, in addition to analyzing the above-mentioned conforming scenarios and the proposal, the applicant, at the request of the Board, also analyzed the following lesser variance scenario: a three-story, 0.88 FAR multiple dwelling with 23 dwelling units; and

WHEREAS, the applicant submitted an additional report that concludes that such a scenario would not realize a reasonable return; and

WHEREAS, accordingly, the Board finds that the instant proposal is the minimum necessary to afford the owner relief; and

WHEREAS, as noted above, CLCA opposes this application on the following bases: (1) the alleged sewer related and locational hardships are typical of Staten Island; (2) the underground improvements in the bed of Clove Road are minimal and won't delay sewer construction; (3) the estimate for the sewer connection has increased during the public hearing process from approximately \$241,000 in November of 2005 to approximately \$526,000 in August of 2006, and in any event, deviates from the cost proposal submitted to the Department of Environmental Protection; (4) the sales comparables in the January 2006 economic analysis are inflated; (5) the non-profit senior housing scenario and the medical office scenario are not as of right, but would require CPC approval; (6) the actual purchase price of the property would allow a return on an as of right residential development; (7) the proposed FAR does not take into account the floor space in the cellar; and (8) that the proposed roof-top recreation space would impact adjacent

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neighbors; and

WHEREAS, as to the first argument, the Board observes that the applicant has submitted ample expert testimony (as discussed above) refuting the contention that the travel distance from the site to the nearest sewer connection point and the DOT restrictions are typical of all development in Staten Island; and

WHEREAS, as to the second argument, the applicant supplied the Board with additional expert testimony and plans that establish that the underground pipes and cables and above-ground wires, trees and poles will be significant obstacles during sewer construction; and

WHEREAS, as to the third argument, the Board observes that CLCA has not submitted any evidence that there was at one time an estimate for \$241,000, and that even if there was, it credits the current estimate as submitted by the applicant; and

WHEREAS, as to the DEP estimate, one of the experts explained that the estimate submitted to DEP is for bond purposes only and never reflects the actual detailed and established cost; and

WHEREAS, as to the fourth argument, the applicant submitted a statement from one of its feasibility experts establishing that the cited comparables were appropriately used; the Board has reviewed this statement and finds it credible and sufficient; and

WHEREAS, as to the fifth argument, the Board notes that it would not compromise the application even if CPC approval was required for a medical office or a not-for-profit senior housing development, since such a scenario would then be discretionary there is no requirement under ZR § 72-21(b) that scenarios that are not as of right be analyzed; and

WHEREAS, as to the sixth argument, the Board notes that the actual purchase price is not the standard measure of the site valuation; rather, site valuation is always established through the submission of comparables, so as to avoid any effect that a purchase transaction that is not arms length might have; and

WHEREAS, instead, in all variance applications, the Board requires applicants to establish the site valuation based upon comparables, as occurred here; and

WHEREAS, as to the seventh argument, the applicant has submitted an explanation of why the lowest level of the proposed building is a cellar rather than a basement, such that the floor space therein does not count as zoning floor area; and

WHEREAS, additionally, as noted above, the Board will condition this grant upon DOB review and approval of the cellar and total zoning floor area; and

WHEREAS, as to the eighth argument, the Board observes that the proposed roof top recreation space is approximately 60 feet away from the nearest neighboring dwelling, and will not compromise in any way the use of these dwellings; and

WHEREAS, accordingly, the Board finds the opposition arguments unpersuasive; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA044R, dated December 22, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance to permit within an R3-2 (HS) zoning district, the construction of a three-story, 40 ft. high 25-unit Use Group 2 multiple dwelling for adults age 55 and over, with a floor area of 24,542 sq. ft. and a Floor Area Ratio (FAR) of 0.95, which does not comply with zoning requirements for total and residential floor area, street wall height, total height, and curb cut and driveway width, contrary to ZR §§ 23-141, 23-631, 25-622 and 25-632, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 20, 2006"- three (3) sheets; "Received September 25" – one (1) sheet, and "Received October 5, 2006" – three (3) sheets; and *on further condition*:

THAT the occupancy of the building shall be limited to persons 55 years of age or older, in accordance with applicable provisions of the Housing for Older Persons Act requirements;

THAT all other Housing for Older Persons Act requirements shall be complied with for the life of the proposed building;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the appropriate authorization from the City Planning Commission be obtained prior to the issuance of any building permit;

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THAT DOB shall review the lowest level of the proposed building and confirm that it is a cellar and that the floor space does not count as zoning floor area;

THAT all fencing and landscaping shall be installed and maintained as indicated on the BSA-approved plans;

THAT accessory and visitor parking shall be provided as indicated on the BSA-approved plans;

THAT all exiting requirements shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

16-06-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application January 27, 2006 – Special Permit Z.R. § 73-622 to permit the proposed enlargement of a one family home, which creates non-compliances with respect to open space and floor area (Z.R. § 23-141), side yards (Z.R. § 23-461) and rear yard (Z.R. § 23-47).

PREMISES AFFECTED – 2253 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7375, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 4, 2006, acting on Department of Buildings Application No. 301990923, reads, in pertinent part:

- “1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio which is contrary to ZR Section 23-141(b).
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space/coverage which is contrary to ZR Section 23-141(b).

3. Proposed enlargement results in two side yards of less than 5 feet and the total of both side yards less than 13 feet, contrary to ZR Section 23-461(a).

4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, with continued hearings on August 8, 2006 and September 19, 2006, and then to decision on October 17, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, certain neighbors provided testimony in support of this application; and

WHEREAS, however, certain neighbors provided testimony in opposition to this application citing concerns about access to light and air and the preservation of the character of the block; and

WHEREAS, the subject lot is located on the west side of East 14th Street, between Avenue V and Gravesend Neck Road; and

WHEREAS, the subject lot has a total lot area of 2,500 sq. ft., and is occupied by an 846.05 sq. ft. (0.338 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 846.05 sq. ft. (0.338 FAR) to 2,498.85 sq. ft. (0.9995 FAR); the maximum floor area permitted is 2,250 sq. ft. (0.90 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 33 percent to 51 percent (the maximum permitted lot coverage is 45 percent) and reduce the open space from 1,653.95 sq. ft. to 1,213.55 sq. ft. (the minimum required open space is 1,375 sq. ft.); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards of 2’-6 ½” and 4’-1 ½” (side yards totaling 13’-0” are required with a minimum width of 5’-0” for one); and

WHEREAS, the proposed enlargement will maintain the non-complying 6’-9 ½” front yard (a minimum front yard of 10’-0” is required); and

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WHEREAS, the proposed enlargement will reduce the rear yard from 45'-9" to 21'-6 1/2" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, both the proposed perimeter wall height of 21'-0" and the total height of 31'-0" comply with district regulations; and

WHEREAS, initially, the applicant proposed a building with a perimeter wall height of 25'-0" and a total height of 35'-0"; and

WHEREAS, at hearing the Board asked the applicant to establish a context for the proposed height; and

WHEREAS, the applicant submitted a streetscape which illustrates that the street is occupied primarily with older one-story bungalows and a small number of newer two- and three story homes; and

WHEREAS, the applicant also submitted photographs of buildings in the vicinity and information about their bulk parameters; and

WHEREAS, the Board notes that buildings in the general vicinity include large multiple-unit dwellings and a number of two- and three-story homes; and

WHEREAS, however, in consideration of the context of the subject block, the Board asked the applicant to reduce the height; and

WHEREAS, specifically, the Board suggested that the floor to ceiling height of the second floor be reduced from 16 feet; and

WHEREAS, the applicant revised the plans to show a second floor height of 12'-4 1/2", which resulted in the total height being reduced from 35'-0" to 31'-0"; and

WHEREAS, the Board notes that the as-of-right enlargements of nearby homes have resulted in homes with 21 ft. wall heights and 31 ft. total heights, with the exception of one with a height of 35 feet; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, the Board also notes that the lot is within an R4 district and that the FAR request is reasonable, given that an FAR of 0.9 is permitted as of right; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board also asked the applicant to clearly indicate which portions of the existing building were being maintained; and

WHEREAS, the applicant represents that the side walls of the foundation and first floor will be retained; and

WHEREAS, the applicant submitted revised drawings highlighting which sections of the foundation, walls, and floors would remain; and

WHEREAS, Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 5, 2006"-(10) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall be used for household storage only;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,498.85 sq. ft., a total FAR of 0.9995, a perimeter wall height of 21'-0", and a total height of 31'-0", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets A2, A3, A4, and A4-1, stamped September 5, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT the front porch shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

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Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

56-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Suri Blatt and Steven Blatt, owner.

SUBJECT – Application March 27, 2006 – Pursuant to ZR §73-622 Special Permit for the enlargement of an existing one family residence which exceeds the maximum allowed floor area and decreases the minimum allowed open space as per ZR §23-141 and has less than the minimum required rear yard as per ZR §23-47.

PREMISES AFFECTED – 1060 East 24th Street, East 24th Street between Avenue J and Avenue K, Block 7605, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 24, 2006, acting on Department of Buildings Application No. 302085213, reads in pertinent part:

1. Proposed floor area contrary to ZR 23-141(a).
2. Proposed open space ratio contrary to ZR 23-141(a).
3. Proposed rear yard contrary to ZR 23-47.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City Record*, with continued hearing on September 19, 2006, and then to decision on October 17, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the west side of East 24th Street, between Avenue J and Avenue K; and

WHEREAS, the subject lot has a total lot area of 5,625 sq. ft., and is occupied by a 2,701.5 sq. ft. (0.48 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,701.5 sq. ft. (0.48 FAR) to 5,850.34 sq. ft. (1.04 FAR); the maximum floor area permitted is 2,812.5 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the open space ratio from 151.81 percent to 51.75 percent (150 percent is the minimum permitted) and the open space from 4,101.16 sq. ft. to 3,012 sq. ft. (the minimum required open space is 4,218.75 sq. ft.); and

WHEREAS, the proposed enlargement will reduce the rear yard from 31’-4 ¾” to 21’-10” (the minimum rear yard required is 30’-0”); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, both the proposed wall height of 22’-9 ½” and the total height of 35’-11 ¾” comply with district regulations; and

WHEREAS, at hearing, the Board expressed concern that the proposal did not meet the criteria for a home enlargement; and

WHEREAS, specifically, the Board was concerned that not enough of the existing home would be retained; and

WHEREAS, further, those portions of the existing home that the applicant proposed to retain had no relationship to the proposed home; and

WHEREAS, in response, the applicant submitted revised plans indicating that a larger portion of the north wall would be retained at the cellar level and on the first and second floors; and

WHEREAS, in addition, the revised plans illustrate a more practical plan for the existing walls and floor joists proposed to be retained; and

WHEREAS, after a review of the revised plans, the Board agrees that the applicant now proposes an actual enlargement; and

WHEREAS, the Board also expressed concern about the compatibility of the proposed home’s bulk and asked the applicant to submit detailed information about the bulk parameters of homes in the vicinity; and

WHEREAS, in response, the applicant submitted a table listing the existing FAR and lot size of all the homes on both sides of East 24th Street within a 200 ft. radius of the site; and

WHEREAS, the applicant asserts that one-third of the homes on East 24th Street within the 200 ft. radius of the site

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have an FAR of 1.0 or greater; and

WHEREAS, the Board asked for documentation to support this assertion; and

WHEREAS, the applicant submitted documentation from DOB and Oasis databases; and

WHEREAS, at the Board's request, the applicant also submitted photographs of two of the comparable nearby homes; and

WHEREAS, further, the applicant submitted a streetscape that illustrates that the street is occupied with a number of comparably-sized homes; and

WHEREAS, the Board agrees that the general vicinity includes large homes comparable in size to the proposed; and

WHEREAS, the Board also notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit in the subject zoning district; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for FAR, floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "October 3, 2006"-(13) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall contain a maximum of 768.6 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 5,850.34 sq. ft., a total FAR of 1.04, a wall height of 22'-9 1/2", and a total height of 35'-11 3/4", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets A-1.1, A3, A4, A5, A6, and A8, stamped October 3, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT the porches shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

112-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Audubon Housing Dev. Fund Corp., owner.

SUBJECT – Application June 5, 2006 – Variance application pursuant to Z.R. §72-21 to permit the construction of a seven-story and cellar residential and commercial building with accessory supportive social services. The accessory supporting social services programs and commercial component will be located on the first floor. The residential component will be located on floors 1 through 7. The premises is located in an M1-4 zoning district. The site was most recently used for automobile sales and storage. The proposal seeks to vary, based on the nearby R7-1 zoning district, Z.R. §23-142 (Residential Floor Area), §24-111 (Total Floor Area), §23-142 (Open Space), 23-22 (Number of Dwelling Units), and §23-632 (for Wall Heights, Total Height, Setbacks, Sky Exposure Plane, and Number of Parking Spaces).

PREMISES AFFECTED – 507 East 176th Street, northwest corner of Third Avenue and 176th Street, Block 2924, Lots 38, 39, 42, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

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Abstain: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 5, 2006, acting on Department of Buildings Application No. 201051404, reads, in pertinent part:

“Proposed (7) seven story residential building in an M1-4 zoning district is contrary to section 42-00 ZR.”;
and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-4 zoning district, the proposed construction of a seven-story with cellar residential/commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on September 26, 2006 after due notice by publication in *The City Record*, and then to decision on October 17, 2006; and

WHEREAS, this application is brought on behalf of Audubon Housing Development Fund Corporation (“Audubon”), a not-for-profit entity; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

WHEREAS, Borough President Adolfo Carrion, Jr., State Senator Efrain Gonzalez, Jr., Public Advocate Betsy Gotbaum, and Congressman Jose E. Serrano all provided testimony in support of this application; and

WHEREAS, the Administration for Children’s Services, the Corporation for Supportive Housing, and New York City’s Department of Housing Preservation and Development also provided testimony in support of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the site, comprised of Lots 38, 39, and 42, has a lot area of approximately 6,980 sq. ft., and is on the northwest corner of Third Avenue and 176th Street, with 56 feet of frontage along Third Avenue and 120 feet of frontage along 176th Street; and

WHEREAS, the site is currently vacant and undeveloped, except for a small metal garage located in the northern portion of the lot; and

WHEREAS, the applicant proposes to construct a seven-story with cellar residential/commercial building; and

WHEREAS, the building will contain 68 studio apartments; and

WHEREAS, the commercial space will be located on the first floor and cellar level (along Third Avenue and for approximately 27 feet along 176th Street); the dwelling units will be located on floors one through seven; and the accessory supportive social services space will be located on the first floor; and

WHEREAS, the commercial component on the first floor will occupy 1,499 sq. ft. of floor area; the residential component will occupy a total of approximately 35,097 sq. ft. on floors one through seven, with 1,202 of that occupied by accessory social services space on the first floor; and

WHEREAS, the proposed building will have a total floor

area of 36,596 sq. ft.; a total FAR of 5.243; a residential floor area of 35,097 sq. ft.; a residential FAR of 5.028; a commercial floor area of 1,499 sq. ft.; a street wall and total height of 72’-8”;

1,752 sq. ft. of open space; an open space ratio of 4.99 percent; and no parking spaces; and

WHEREAS, as to programmatic needs, the applicant represents that the proposed housing program will allocate approximately 60 percent of the units for young adults who no longer qualify for foster care and 40 percent for other low-income young adults from the surrounding neighborhood; and

WHEREAS, the applicant represents that Audubon worked closely with HPD to design the facility with components of existing facilities with comparable missions; and

WHEREAS, further, the applicant represents that the design includes access to onsite accessory social service programming, which includes training, counseling, and case management; and

WHEREAS, additional onsite amenities include a garden in the rear courtyard, laundry facilities, and a green roof to promote energy efficiency; and

WHEREAS, the applicant further represents that in order to qualify for funding from HPD, Audubon must provide a minimum of 68 apartments; and

WHEREAS, the applicant notes that the construction of 68 livable apartments at the site requires a certain minimum amount of floor area and access to light and air which, in turn, necessitates the requested building envelope; and

WHEREAS, however, since the site is within the subject manufacturing district, the requested use waiver is required; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the surface and subsurface contamination and the resultant need for remediation; (2) the high ground water table; (3) the history of uses at the site; and (4) the inability to support manufacturing use at the site; and

WHEREAS, as to the contamination, the applicant represents that soil borings indicate that there are high levels of semi-volatile organic compounds, petroleum hydrocarbons, and metals at the site; and

WHEREAS, the applicant represents that this condition requires that any soil to a depth of ten feet is to be considered contaminated and must be disposed of in accordance with applicable regulations; and

WHEREAS, the applicant has documented the costs associated with the remediation; and

WHEREAS, as to the water table, the applicant represents that the soil borings indicate that the site has a high water table and that groundwater has been measured at depths of 12’-0” to 12’-6”;

WHEREAS, the applicant represents that additional construction measures, including the installation and maintenance of multiple sump pumps and a dewatering system, are required to accommodate the high water table and make the building water tight, both during construction and after its completion; and

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WHEREAS, the applicant represents that remediation measures may also be necessary prior to discharging groundwater at the site into the sewer system; and

WHEREAS, the applicant has submitted reports from a geotechnical consultant supporting these assertions; and

WHEREAS, as to the history of use at the site, the applicant represents that all three of the subject lots have a history of residential use and that they have all been vacant since approximately 1984; and

WHEREAS, the applicant has submitted Sanborn maps that support this assertion; and

WHEREAS, as to the viability of a manufacturing use at the site, the applicant represents that there are a large number of vacant sites in the area, and that only four sites within a 400-ft. radius of the site are occupied with manufacturing uses; and

WHEREAS, further, the applicant notes that two of the four sites occupied by manufacturing uses are significantly larger than the subject site; and

WHEREAS, the applicant submitted a 400-ft. radius diagram in support of this assertion; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, as to residential use, the applicant states that the proposed building is located across Third Avenue from an R7-1 zoning district and is surrounded by residential buildings; and

WHEREAS, specifically there is a four-story multiple dwelling adjacent to the site to the north along Third Avenue, and a four-story multiple dwelling adjacent to the site along 176th Street; and

WHEREAS, additionally, there is a 118-unit eight-story residential building one block from the site at 176th Street and Bathgate Avenue; and

WHEREAS, the applicant represents that there are also a significant number of community facility uses in the vicinity, including an elementary school, three churches, two health centers, and a library all within one block of the subject site; and

WHEREAS, the applicant also notes that Crotona Park is directly across the street from the site; and

WHEREAS, as to commercial use, the applicant notes that the proposed as-of-right commercial use is situated on Third Avenue, which has a commercial context; and

WHEREAS, as to parking, the applicant asserts that because the future residents will be low-income young adults, substantial car ownership is not anticipated and the absence of the 20 required spaces will not have a negative impact on the character of the neighborhood; and

WHEREAS, as to bulk, the applicant represents that

buildings within the 400-ft. radius of the site range in height from one story to eight stories; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as discussed above, Audubon requires a minimum number of housing units in order to achieve its programmatic needs; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Audubon to carry out the stated needs; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA095X, dated June 14, 2006; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: (1) an Environmental Assessment Statement Form, dated June 14, 2006; (2) Phase I Environmental Site Assessment Report dated January 2006 and a Phase II Subsurface Investigation Report received on August 11, 2006; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, air quality and noise impacts; and

WHEREAS, a Restrictive Declaration was executed on October 4, 2006 and submitted for proof of recording on October 6, 2006, which requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the Restrictive Declaration and the Applicant's agreement to the conditions noted below; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site in an M1-4 zoning district, a proposed seven-story with cellar residential/commercial building, which is

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contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 3, 2006" - (6) sheets; and *on further condition*:

THAT any change in ownership, operator, or control of the building shall require the prior approval of the Board;

THAT the above condition shall be listed on the certificate of occupancy;

THAT the parameters of the proposed building shall be: a total floor area of 36,596 sq. ft.; a residential floor area of 35,097 sq. ft.; a commercial floor area of 1,499 sq. ft.; a total FAR of 5.243; a residential FAR of 5.028; a street wall height of 72'-8"; and a total height of 72'-8" (without bulkhead);

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

149-06-BZ

APPLICANT – Sheldon Lobel, P.C., for NYC Department of Citywide Administrative Services, owner; Boro Park Volunteers of Hatzolah, Inc., lessee.

SUBJECT – Application July 7, 2006 – Variance pursuant to Z.R. §72-21 to permit the development of the site to accommodate a not-for-profit ambulance/emergency vehicle garage, dispatch, and training facility. The premise is located in an M2-1 zoning district. The proposal is request variance waivers relating to floor area (Z.R. §43-12) and the number of parking spaces (Z.R. §44-21).

PREMISES AFFECTED – 3701 14th Avenue, southwest corner of the intersection formed by 14th Avenue and 37th

Street, Block 5348, Lot 9 (portion), Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Sheldon Lobel, Larry Morrish, Douglas Jablon, Elliot Rosman, Bernie Gips, Simcha Felder, Sister Barbara Mullen and Ron Mandel.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 27, 2006, acting on Department of Buildings Application No. 302184428, reads, in pertinent part:

- "1) The floor area does not comply with ZR 43-12.
- 2) The number of parking spaces does not comply with ZR 44-21."; and

WHEREAS, this is an application under ZR § 72-21, to permit the development of a site for an ambulance/emergency vehicle garage (UG 16C), and a dispatch center and training facility (UG 6D) in an M2-1 zoning district, contrary to ZR §§ 43-12 and 44-21; and

WHEREAS, a public hearing was held on this application on September 26, 2006, after due notice by publication in the *City Record*, and then to decision on October 17, 2006; and

WHEREAS, this application is brought on behalf of Boro Park Volunteers of Hatzolah ("Hatzolah"), a not-for-profit entity; and

WHEREAS, New York City, through the New York City Economic Development Corporation (EDC), has agreed to sell the site to Hatzolah and is a co-applicant; and

WHEREAS, an application for a special permit to allow development within a former railroad right-of-way was brought to the Department of City Planning concurrently with this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application; and

WHEREAS, City Council Member Simcha Felder and EDC provided testimony in support of this application; and

WHEREAS, certain members of the community served by Hatzolah also provided testimony in support of this application; and

WHEREAS, the subject premises is located at the southwest corner of 14th Avenue and 37th Street; and

WHEREAS, the site has a lot area of 5,000 sq. ft.; and

WHEREAS, the site is currently undeveloped and used for vehicle storage; and

WHEREAS, the applicant proposes to construct a 45'-10" high three-story with cellar building to be occupied by a volunteer ambulance/emergency vehicle company, which includes space for a UG 16C garage and a UG 6D dispatch

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center and training facility; and

WHEREAS, the applicant obtained a pre-consideration from DOB which indicates that the proposed use groups are acceptable; and

WHEREAS, the 5,000 sq. ft. cellar will be occupied by a large training room for ambulance volunteers; and

WHEREAS, the 4,600 sq. ft. first floor will serve as a garage for six ambulances; and

WHEREAS, the 5,000 sq. ft. second floor will be occupied by accessory administrative offices, a conference room, and two small training rooms; and

WHEREAS, the 5,000 sq. ft. third floor will be occupied by classrooms, an exercise room, and equipment storage; and

WHEREAS, the proposed building will have a total floor area of 14,600 sq. ft. (10,000 is the maximum permitted); a total FAR of 2.92 (2.0 is the maximum permitted); and no parking spaces other than the six used for emergency vehicle storage (17 parking spaces, or one space per 600 sq. ft. of floor area on the second and third floors, are required); and

WHEREAS, the applicant states that Hatzolah is a volunteer ambulance/emergency response service which is offered for free to all community members within the neighborhoods it serves; and

WHEREAS, as to programmatic needs, the applicant represents that the proposed facility will allow consolidation of Hatzolah's services, which are now located in four separate smaller facilities with the following limitations: 1) one facility accommodates three ambulances and small training sessions; 2) one facility accommodates the administrative offices; 3) one facility accommodates a dispatch office; and 4) one accommodates a garage used for equipment storage; and

WHEREAS, the applicant asserts that the efficiency and function of Hatzolah's operation are compromised due to the distance between the facilities and lack of consolidation; and

WHEREAS, the applicant represents that the proposed parking and floor area waivers are necessary to construct a single building that can accommodate the programming currently located at Hatzolah's separate facilities; and

WHEREAS, specifically, the applicant represents that the new building is necessary to allow Hatzolah to expand its training capacity and increase and diversify its vehicle dispatch points, thereby improving response times; and

WHEREAS, the applicant also represents that a corner location such as the subject site is the best location for the facility because it allows immediate access onto two streets; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the subsurface soil conditions and the resultant need for remediation; and (2) the history of uses at the site; and

WHEREAS, as to the soil contamination, the applicant represents that soil borings indicate high levels of semivolatiles organic compounds and metals at the site; and

WHEREAS, because of the contamination, the applicant represents that the New York City Department of Environmental Protection requires adherence to certain remediation measures;

these include the incorporation of a vapor barrier in the design plan for the development, and the development and adherence to a site-specific construction health and safety plan; and

WHEREAS, as to the history of uses at the site, the applicant states that the site is located on a portion of a former railroad right-of-way previously used by the South Brooklyn Railway which operated at ground level along 37th Street between Fort Hamilton Parkway and MacDonal Avenue; and

WHEREAS, further, the applicant states that the subject right-of-way was also the path of an elevated transit line, which was demolished in 1985; and

WHEREAS, additionally, the applicant represents the site has not been developed with traditional manufacturing or commercial uses since at least 1929; and

WHEREAS, the applicant asserts that since the demolition of the elevated transit lines in 1985, the site has been undeveloped; and

WHEREAS, the applicant has submitted Sanborn maps which support these assertions; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, specifically, the Board believes that, given the soil conditions, which result in increased construction costs, and the size constraints of the site, the proposed configuration and amount of floor area are required to allow for efficient use; and

WHEREAS, Hatzolah need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that there are a variety of commercial and manufacturing buildings surrounding the site; and

WHEREAS, specifically, the applicant states that the site abuts a gasoline service station with an accessory store; and

WHEREAS, the applicant states that other uses on the subject block include parking, an iron factory, and a warehouse; and

WHEREAS, as to bulk, the applicant states that there is six-story manufacturing building directly across 37th Street that occupies the entire block front from 14th Avenue to 15th Avenue and that there is a large four-story factory directly across 14th Avenue; and

WHEREAS, other sites in the vicinity are occupied by two- and three-story buildings; and

WHEREAS, as to parking, the applicant cites to the Environmental Assessment Statement (EAS) which explains that during the hours when parking would be needed at the site - off-peak weekday hours when classes would be held - there is sufficient on-street parking available in the immediate vicinity; and

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WHEREAS, additionally, the applicant represents that except during training sessions, the amount of personnel at the site ranges from only two to five, depending on the shift, and that the parking need would be minimal; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as discussed above, Hatzolah requires a consolidation of its facilities to a new building in order to achieve its programmatic needs; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief while allowing Hatzolah to meet its stated needs; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Office of the Deputy Mayor for Economic Development and Rebuilding is the CEQR Lead Agency for this project and the Board has reviewed its Final EAS CEQR No. 06DME004K, dated January 25, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals adopts the Negative Declaration issued by the New York City Office of Environmental Coordination on behalf of the Office of the Deputy Mayor for Economic Development and Rebuilding with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit the development of a site to accommodate an ambulance/emergency vehicle garage, dispatch center, and training facility in an M2-1 zoning district, contrary to ZR §§ 43-12 and 44-21; *on condition* that

any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 28, 2006"--(9) sheets; and *on further condition*:

THAT any change in ownership, operator, or control of the site shall require the prior approval of the Board;

THAT the above condition shall be listed on the certificate of occupancy;

THAT the parameters of the proposed building shall be as follows: a total floor area of 14,600 sq. ft.; a total FAR of 2.92; and a street wall and total height of 45'-10";

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2006.

194-04-BZ thru 199-04-BZ

APPLICANT – Agusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179), Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178), Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177), Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176), Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175), Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for continued hearing.

MINUTES

328-04-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application October 5, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a six story residential building, with twelve dwelling units, Use Group 2, located in an M1-1 zoning district, does not comply with zoning requirements for use, bulk and parking provisions, is contrary to Z.R. §42-00, §43-00 and §44-00.

PREMISES AFFECTED – 110 Franklin Avenue, between Park and Myrtle Avenues, Block 1898, Lots 49 and 50, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 21, 2006, at 10 A.M., for decision, hearing closed.

33-05-BZ

APPLICANT– Sheldon Lobel, P.C., for Yeshiva Tiferes Yisroel, owner.

SUBJECT – Application February 24, 2005 – Variance pursuant to Z.R. 72-21 to permit the construction of a non-complying school (Yeshiva Tiferes Yisrael). The proposed Yeshiva will be constructed on lots 74, 76, 77, 78 and 79 and will be integrated with the existing Yeshiva facing East 35th Street which was approved in a prior BSA grant on lots 11, 13, 15, and 16. The existing and proposed Yeshiva and their associated lots will be treated as one zoning lot. The subject zoning lot is located in an R5 zoning district. The requested waivers and the associated Z.R. sections are as follows: Floor Area Ratio and Lot Coverage (24-11); Side Yard (24-35); Rear Yard (24-36); Sky Exposure Plane (24-521); and Front Wall Height (24-551).

PREMISES AFFECTED – 1126/30/32/36/40 East 36th Street, west side of East 36th Street, between Avenues K and L, Block 7635, Lots 74, 76, 77, 78, 79, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

175-05-BZ

APPLICANT – Eric Palatnik, P.C. for 18-24 Luquer Street Realty LLC, owner.

SUBJECT – Application July 28, 2005 – Zoning variance pursuant to Z.R. §72-21 to allow the construction of a proposed four (4) story multi-family dwelling containing sixteen (16) dwelling units and eight (8) accessory parking spaces. Project site is located in an M1-1 zoning district and is contrary to Z.R. §42-00.

PREMISES AFFECTED – 18-24 Luquer Street, Between Hicks Street and Columbia Street, Block 520, Lot 13,16, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

199-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Stefano Troia, owner.

SUBJECT – Application August 23, 2005 – under Z.R. §72-21 to allow a proposed twelve (12) story residential building with ground floor retail containing eleven (11) dwelling units in an M1-6 Zoning District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 99 Seventh Avenue, located on the southeast corner of 7th Avenue and West 27th Street (Block 802, Lot 77), Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Joseph Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for decision, hearing closed.

313-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Douglas Brenner and Ian Kinniburgh, owners.

SUBJECT – Application October 20, 2005 – under Z.R. §72-21 to allow a proposed enlargement of an existing residential building located in C6-1 and R7-2 districts to violate applicable rear yard regulations; contrary to Section 23-47.

PREMISES AFFECTED – 26 East 2nd Street, Block 458, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Stuart Beckerman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

MINUTES

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

363-05-BZ

APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.

SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. sections 23-141, 23-45(a), 23-462(a), 23-861, and 25-23.

PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M., for continued hearing.

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application December 28, 2005 – Pursuant to ZR §73-44 Special Permit to permit the proposed retail, community facility and office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking and is contrary to ZR §36-21.

PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik, Hiram Rothkrug and Tim Mustafa.

For Opposition: Earle Tolkman.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for continued hearing.

302-05-BZ

APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.

SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR sections 32-14 (use), 33-121 (FAR), 101-721 and 101-41(b) (street wall height), 101-351 (curb cut), and 35-24 (setback).

PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100’ east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most and Fack Freeman.

For Opposition: Robert Perris, Sandy Balbola and Anita Abraham-Inz.

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for continued hearing.

82-06-BZ

APPLICANT– Eric Palatnik, P.C., for Utopia Associates, owner; Yum Brands, Inc., lessee.

SUBJECT – Application May 2, 2006 – pursuant to Z.R. §72-21 to request a variance to permit the re-development of an existing non-conforming eating and drinking establishment (Use Group 6) with an accessory drive-thru located in an R3-2 zoning district and contrary to Z.R. Section 22-00. The existing accessory drive-thru was authorized through a prior BSA approval (168-92-BZ). The proposal would create a new eating and drinking establishment (Use Group 6) with accessory drive-thru.

PREMISES AFFECTED – 172-12 Northern Boulevard, between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Eric Palatnik and Ken Bedrosian.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

104-06-BZ

APPLICANT– Eric Palatnik, P.C., for Martin Menashe, owner.

SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to partially legalize and partially alter a long standing enlargement to an existing single family residence which is contrary to ZR 23-141 for floor area and open space and ZR 23-46 for side yard requirement. The premise is located in an R-2 zoning district. This current application filing has a previous BSA Ca. #802-87-BZ.

PREMISES AFFECTED – 3584 Bedford Avenue, north of Avenue “O”, Block 7678, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

132-06-BZ

APPLICANT– Fried Frank Harris Shriver & Jacobson, LLP, for 122 Greenwich Owner, LLC, owner.

SUBJECT – Application June 23, 2006 – Variance pursuant to Z.R. §72-21 to allow an eleven (11) story residential building with ground floor retail and community facility uses on a site zoned C6-2A and C1-6. The proposed

MINUTES

building would contain 36 dwelling units and would be non-complying with respects to floor area, lot coverage, rear yard, height and setback, inner court, and elevator bulkhead requirements; contrary to Z.R. §§23-145, 35-31, 23-47, 35-24, 23-633, 23-851 and 33-42.

PREMISES AFFECTED – 122-136 Greenwich Avenue, northeast corner of Greenwich Avenue and 8th Avenue, Block 618, Lot 1, Borough of Manhattan

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stephen Lefkowitz, Dominic Dunn, Gloria Glas, David Penick, Andrew A’Amico, James K, Allen Roskoff, Danielle Sevier and Jack Freeman.

For Opposition: Gregory Brenden(Assemblymember Glick’s Office, Brian Cook, Doris Diether, Melissa Baldock, Zaehaner Winestine, Nicholas Atocha and Wendy Deinbo.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M., for continued hearing.

176-06-BZ

APPLICANT– Lewis E. Garfinkel, R.A., for Aryeh Adler, owner.

SUBJECT – Application August 16, 2006 - Pursuant to ZR 73-622 for the enlargement of a single family home which proposes less than the minimum rear yard, ZR 23-47, side yards, ZR 23-461, open space, ZR 23-141 and exceeds the permitted FAR, ZR 23-141. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1253 East 28th Street, east side of East 28th Street, Block 7646, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnick.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 6:00 P.M.

BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

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Volume 91, No. 41

November 3, 2006

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

SATISH BABBAR, *Vice-Chair*

CHRISTOPHER COLLINS

DARA OTTLEY-BROWN

Commissioners

Jeffrey Mulligan, *Executive Director*

Roy Starrin, *Deputy Director*

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Tuesday, October 24, 2006**

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106-06-BZ	1436 East 28 th Street, Brooklyn
121-06-BZ	495 East 180 th Street, Bronx
158-06-BZ	1410 East 22 nd Street, Brooklyn

DOCKETS

New Case Filed Up to October 24, 2006

280-06-BZ

181-08 Horace Harding Expressway, Southeast corner of Utopia Parkway and Horace Harding Expressway., Block 7070, Lot 2, Borough of **Queens, Community Board: 8.** (SPECIAL PERMIT) - 73-211 - The reconstruction and maintenance of an automotive service station with an accessory convenience store.

281-06-BZ

232 Beaumont Street, West side of Beaumont Street south of Oriental Boulevard, Block 8739, Lot 50, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT) 73-622 - To allow for the legalization of the existing floor area as well as to allow for the reduction in overall height of the home.

282-06-A

232 Beaumont Street, West side of Beaumont Street south of Oriental Boulevard., Block 8739, Lot 50, Borough of **Brooklyn, Community Board: 15.** Appeal - To seek approval of the above-referenced Department of Buildings Objection Number and to appeal the 9-27-06 denial of the application on the basis that same contrary to law, was arbitrary and capricious and was erroneously based upon DOB's opinion

283-06-BZ

1372 East 29th Street, 190' North of intersection formed by East 29th Street and Avenue N., Block 7664, Lot 76, Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT) - 73-622 - Proposed extension of existing one family dwelling.

284-06-A

1045 Beach 9th Street, Southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue., Block 15554, Lot 49, 51, Borough of **Queens, Community Board: 14.** General City Law Section 35 - To permit the proposed construction.

285-06-BZ

23 West 45th Street, 3rd Floor, the premises is located on the north side of West 45th Street between Sixth Avenue., Block 1261, Lot 25, Borough of **Manhattan, Community Board: C6.** (SPECIAL PERMIT) 73-36 - To permit the operation of a Physical Culture Establishment on the third floor of an existing building.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

NOVEMBER 21, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 21, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

757-89-BZ

APPLICANT – Cozen O’Connor, Barbara Hair, Esq., for 401 Commercial, L.P., owner; Bally Sports Club, Inc., lessee.

SUBJECT – Application October 5, 2006 – Extension of Term and waiver of the rules for a Special Permit (§73-36) to allow a Physical Cultural Establishment in a C6-4.5 zoning district within the Midtown Special District.

PREMISES AFFECTED – 401 Seventh Avenue, aka 139 West 32nd Street, Block 808, Lots 7501, 40, Borough of Manhattan.

COMMUNITY BOARD #5M

17-93-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Lincoln Square Commercial Holding, owner; MP Sports Club Upper Westside LLC on behalf of Reebok-Sports Club/NY, Ltd., lessee.

SUBJECT – Application October 13, 2006 - Extension of term of a previously granted special permit (73-36) for a physical culture establishment (Reebok Sports Club/NY Ltd.) which expired on June 7, 2004; a waiver to file more than a year after the expiration of the term; extension of time to obtain a permanent certificate of occupancy and an amendment for the change in management/ownership and the hours of operation located in a C4-7(L) zoning district.

PREMISES AFFECTED – 160 Columbus Avenue (a/k/a 1992 Broadway), Block 1139, Lots 24, 30, Borough of Manhattan.

COMMUNITY BOARD #7M

139-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for The Mondrian Condominium, owner; Equinox 54th Street, Inc., lessee.

SUBJECT – Application June 30, 2006 - Extension of Term for a Special Permit (§73-36) to allow a Physical Cultural Establishment in a C1-9(TA) zoning district.

PREMISES AFFECTED – 250 East 54th Street, southwest corner of East 54th Street and 2nd Avenue, Block 1327, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

117-06-A

APPLICANT – Eric Palatnik, P.C., for Esther C. Wallerstein, owner.

SUBJECT – Application June 8, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 1373 East 13th Street, between Avenue N and Elm Avenue, Block 6742, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

166-06-BZY

APPLICANT – Eric Palatnik, P.C., for Mujahid Mian, owner.

SUBJECT – Application July 28, 2006 – Proposed extension of time (§11-331) to complete construction of a minor development for a multi -family building. Prior zoning was R4 zoning district and new zoning is R4-A as of June 29, 2006.

PREMISES AFFECTED – 84-59 162nd Street, south of the corner formed by the intersection of 84th Drive and 162nd Street, Block 9786, Lot 7, Borough of Queens

COMMUNITY BOARD #8Q

231-06-BZY

APPLICANT – Rothkrug Rothkrug and Spector, for Medhat M. Hanna, owner.

SUBJECT – Application September 11, 2006 –Extension of time to complete construction and obtain a Certificate of Occupancy for a minor development under (11-332) for a single family home. R3-1 zoning district.

PREMISES AFFECTED – 102 Greaves Avenue, intersection of Greaves and Dewey Avenue, Block 4568, lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

CALENDAR

NOVEMBER 21, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 21, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

75-06-BZ

APPLICANT– Joseph P. Morsellino, Esq., for Cord Meyer Development, owner.

SUBJECT – Application April 25, 2006 – Zoning variance pursuant to § 72-21 to allow a proposed twenty-one (21) story residential building with ground floor retail and community facility uses to violate applicable FAR (§ 23-142 and § 35-22), open space ratio (§ 23-142, § 35-22, and § 35-33) and sky exposure plane (§ 23-632) regulations. The proposed building would include 136 dwelling units and 146 parking spaces. The project site is located within an R7-1/C1-2 zoning district.

PREMISES AFFECTED – 108-20 71st Avenue, northeast corner of Queens Boulevard and 71st Avenue, Block 2224, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

83-06-BZ

APPLICANT– Eric Palatnik, P.C., for Simon Blitz, owner.

SUBJECT – Application May 2, 2006 - Variance (§72-21) to allow the conversion and two (2) story enlargement of an existing four story industrial building. The proposed multi-family building will contain six (6) floors, ground floor retail use, and fourteen (14) dwelling units. No parking spaces are proposed. The proposal would exceed the maximum floor area ratio (123-64 (a)) and applicable height and setback requirements (123-662). The project site is located within the Hunters Point Subdistrict of the Special Long Island City Mixed Use District and is zoned M1-4/R6A (LIC).

PREMISES AFFECTED – 47-33 Fifth Street, north side of 5th Street, between 48th Avenue and 47th Road, Block 30, Lo 26, Borough of Queens.

COMMUNITY BOARD #2Q

140-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 21-29 Belvidere Realty, LLC, owner.

SUBJECT –Application July 6, 2006 - Special Permit pursuant to Z.R. §73-53 to allow the proposed four-story enlargement of a legal and existing, conforming four-story manufacturing building. The premise is located in an M1-1 zoning district. The proposal is seeking waivers of Z. R. Sections 43-12 (FAR); 43-43 (Wall height, total height, number of stories, setbacks, and sky exposure plane); and

43-26 (Rear yard).

PREMISES AFFECTED – 25-29 Belvidere Street, located on the east side of Belvidere Street between Broadway and Beaver Street, Block 3135, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #4BK

141-06-BZ

APPLICANT– Eric Palatnik, P.C., for Congregation Tehilo Ledovid, owner.

SUBJECT – Application July 6, 2006 - Variance pursuant to Section 72-21 to permit the proposed three-story synagogue. The Premise is located in an R5 zoning district. The proposal includes waivers relating to floor area and lot coverage (24-11); front yards (Z.R. 24-34); side yard (24-35); wall height and sky exposure plane (24-521); and parking (25-31).

PREMISES AFFECTED – 2084 60th Street, southwest corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

181-06-BZ

APPLICANT – Greenberg Trarurig, LLP, by Jay Segal/Deirdre Carson, for 471 Washington Street Partners, owners.

SUBJECT – Application August 21, 2006 - Zoning variance pursuant to (§72-21) to allow a nine (9) story residential building containing seven (7) dwelling units and ground floor retail use in an M1-5 district (Area B-2 of the Special Tribeca Mixed Use District). The proposal is contrary to use regulations (§ 42-10 and § 111-104(d)).

PREMISES AFFECTED – 471 Washington Street (aka 510-520 Canal Street), Block 595, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 24, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, August 8, 2006 as printed in the bulletin of August 17, 2006, Vol. 91, No. 31 & 32. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

933-28-BZ, Vol. II

APPLICANT – Michael M. Robbins, R.A., A.I.A., P.C., for Roger Budhu, owner.

SUBJECT – Application September 12, 2005 – Pursuant to ZR 11-411 for the extension of term/waiver of an automotive service station with auto repairs which expired on October 29, 2004, and an amendment to legalize a portion of the building to an accessory convenience store. The premise is located in an R-5 zoning district.

PREMISES AFFECTED – 125-24 Metropolitan Avenue, southwest corner of 126th Street, Metropolitan Avenue. Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Michael M. Robbins.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to the approved plans, and an extension of term for a previously granted variance for a gasoline service station, which expired on October 29, 2004 ; and

WHEREAS, a public hearing was held on this application on September 26, 2006 after due notice by publication in *The City Record*, and then to decision on October 24, 2006; and

WHEREAS, Community Board, 9, Queens, recommends approval of this application on the condition that two street trees be planted at the property at the 126th Street frontage by May 31, 2007; and

WHEREAS, the site is located on the southwest corner of 126th Street and Metropolitan Avenue; and

WHEREAS, the site is located within an R5 zoning district and is improved upon with a gasoline service station with automotive repairs and an accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the

subject site since approximately 1949 when, under the subject calendar number, the Board granted a variance for the maintenance and construction of the gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on April 28, 1998, the grant was extended for a term of ten years from the expiration of the prior grant, to expire on October 29, 2004; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, additionally, the applicant proposes to legalize the conversion of a portion of the building from office to an accessory convenience store; the remaining portion of the building, occupied by the lubritorium, automotive repair, restrooms, and storage, remains unchanged; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

WHEREAS, the Board notes that the approved plans indicate two street trees along 126th Street; and

WHEREAS, the applicant has submitted plans indicating that one tree will be planted along 126th Street and the existing tree there will remain; and

WHEREAS, the Board notes that the applicant is required to ensure the two street trees along 126th Street are maintained; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendment to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on October 25, 1949, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 29, 2004 to expire on October 29, 2014, and to legalize the conversion of a portion of the building to an accessory convenience store *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received August 10, 2006’–(2) sheets and ‘October 10, 2006’– (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on October 29, 2014;

THAT the above condition shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one year of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect, including the provision of two street trees;

THAT an additional street tree shall be planted on 126th Street within six months of the date of this grant;

THAT this approval is limited to the relief granted by the

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Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(NB 6886/47)

Adopted by the Board of Standards and Appeals, October 24, 2006.

1888-61-BZ

APPLICANT – Alfonso Duarte, for Ali Amanolahi, owner.
SUBJECT – Application June 21, 2005 – Pursuant to Z.R. §11-412 for an Amendment to an eating and drinking establishment and catering hall for the further increase in floor area and the to legalize the existing increase in floor area, the separate entrance to the catering hall and the drive thru at the front entrance. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 93-10 23rd Avenue, southwest corner of 94th Street, Block 1087, Lot 1, Elmhurst, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an amendment to permit approval of plans reflecting certain existing site modifications and additional proposed modifications (with full legalization of some modifications deferred to DOB) to an eating and drinking establishment and catering hall; and

WHEREAS, a public hearing was held on this application on March 14, 2006, after due notice by publication in *The City Record*, to continued hearings on April 25, 2006, June 13, 2006, August 15, 2006, and October 17, 2006, and then to decision on October 24, 2006; and

WHEREAS, a committee of the Board conducted a site visit of the subject premises, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 3, Queens, recommends disapproval of this application, citing concerns about noise, altercations among patrons at closing time, patrons’ cars blocking neighbors’ driveways, the suspected unlawful use of the cellar as a cabaret, the fire safety and structural soundness of the building, and the number of outstanding DOB/ECB violations; and

WHEREAS, the site is a 25,172 sq. ft. lot located on the south side of 23rd Avenue between 93rd Street to 94th Street; and

WHEREAS, the site is located within an R3-2 zoning district and is improved upon with a 7,332 sq. ft. one-story with cellar building occupied as an eating and drinking establishment doing business as Gran Rancho Jubilee (the “Restaurant”); and

WHEREAS, the Restaurant’s cellar level is used for catered events (Use Group 9) and the first floor is occupied by restaurant use without entertainment (Use Group 6); and

WHEREAS, there is also a 17,000 sq. ft. parking lot for 38 cars; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 16, 1963, when, under the subject calendar number, the Board made a grant under Section 7a of the Old Zoning Resolution to permit the redevelopment of a site with a one-story and cellar building for use as a restaurant, bar, and cocktail lounge, with accessory parking; and

WHEREAS, on November 29, 1966, the application was amended to include a catering use in the cellar; and

WHEREAS, the subsequently issued certificate of occupancy permits an occupancy of 240 persons in the cellar, 280 on the first floor, and accessory parking for more than five cars; and

WHEREAS, since the last approval, the owner of the premises made a number of illegal modifications to the site; and

WHEREAS, specifically, the owner made the following modifications: an enlargement of the first floor, which now includes enclosed decks located on the north and east sides of the building; the attachment of storage containers/trailers to the first floor; the placement of additional storage containers/trailers in the parking lot; a new entry to the cellar on 23rd Avenue; a roofed drive-through on 94th Street; and interior modifications in the cellar and on the first floor; and

WHEREAS, in addition to seeking the legalization of these changes, the applicant also initially proposed to increase the occupancy of the first floor from 280 to 371; and

WHEREAS, additionally, the applicant initially proposed to cure Building Code violations related to the illegal construction and Fire Code violations related to public assembly requirements; and

WHEREAS, the applicant concedes that no public assembly permit has been obtained; and

WHEREAS, as discussed below, the Board found many of the proposed legalizations and modifications objectionable, and required the applicant to amend the application accordingly, or to seek legalization directly through DOB; and

WHEREAS, generally, because of these modifications, the Board expressed concern about the safe and legal operation of the Restaurant and the number of outstanding violations; and

WHEREAS, more specifically, the Board expressed concerned about: (1) the proposed increased capacity of the Restaurant in light of its current uses; (2) the adequacy of the amount of parking, the parking lot layout, and the reduction in on-site parking due to the illegal trailers; (3) illegal construction and the ability to meet Building Code and Fire Code requirements; and (4) the mitigation of the Restaurant’s impact

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on neighbors; and

WHEREAS, as to capacity, the Board asked the applicant why it was necessary to legalize the decks and therefore increase the floor area available for additional occupancy; and

WHEREAS, the applicant responded that the decks were for aesthetic purposes to promote the Restaurant's Caribbean theme, and were not required for additional occupancy; and

WHEREAS, additionally, the applicant represents that the use of the decks is limited primarily to the spring and summer; and

WHEREAS, the applicant stated that based on the actual floor area, with the decks, a capacity of 371 could be accommodated; and

WHEREAS, however, at the Board's direction, the applicant agreed to limit the occupancy to 305 patrons (320 with employees) on the first floor, and 240 in the cellar; and

WHEREAS, at hearing, the Board also questioned the applicant about the uses at the site and asked if it was operating an unlicensed cabaret in the cellar; and

WHEREAS, specifically, the Board asked if there was a coverage charge for admittance to the cellar; and

WHEREAS, the applicant explained that the cellar is used for UG 9 catering use, and that the only entertainment is that associated with the catered events and that attendees are invited guests who do not pay a cover charge; and

WHEREAS, the applicant also responded that the first floor is solely occupied by UG 6 restaurant use without entertainment; and

WHEREAS, the Board accepts this clarification, and concludes that the Restaurant can safely accommodate these uses so long as the occupancy of each level in the Restaurant is limited as indicated above; and

WHEREAS, as to parking, the Board shared the Community Board's concern, and questioned whether the parking lot was able to accommodate the parking demands generated by the Restaurant's two uses; and

WHEREAS, the Board asked the applicant to explore various means of accommodating any excess parking demand, especially since any overflow from the lot might extend into the neighboring residential streets; and

WHEREAS, specifically, the Board suggested that the applicant investigate the removal of the storage containers situated in the parking lot (which would allow for more parking) and the requirement of valet parking during peak hours; and

WHEREAS, at the Board's request, the applicant performed an analysis of the parking need and represents that in a typical year there are only three high-volume days (certain holidays) when the parking lot cannot accommodate the parking demand; and

WHEREAS, additionally, the applicant indicated that two of the three storage containers currently located in the parking lot would be relocated offsite; and

WHEREAS, the applicant also agreed to provide valet parking during peak hours, from 3:00 p.m. until closing daily, and to provide valet parking at all times for any area of the parking lot that does not provide a 24 ft. aisle width; and

WHEREAS, additionally, the applicant provided documentation from a business across 23rd Avenue, Dollar Rental, stating that it would allow the Restaurant to use parking spaces at its business; the applicant agrees to post a sign in the Restaurant parking lot indicating the availability of this parking; and

WHEREAS, the applicant also represents that there are 30 on-street parking spaces in the vicinity that are not on residential streets, and that there is public parking available at the Clarion Hotel, adjacent to Dollar Rental; and

WHEREAS, the Board has reviewed these representations about parking, and agrees that any parking demand generated by the Restaurant can be accommodated without impacting residential streets, so long as the Restaurant complies with the conditions set forth below; and

WHEREAS, as to building safety, the Board expressed concerns about: (a) proper egress from the cellar, and (b) the fire safety of the thatched roofing materials, the wood decks, and the remaining exterior wood storage area; and

WHEREAS, in response to the Board's concerns about egress, the applicant consulted with DOB, and reported to the Board that DOB was awaiting Board approval on the requested legalizations and proposed modifications before evaluating the means of egress; and

WHEREAS, as indicated below, the Board defers review and approval of egress from both the first floor and cellar to DOB; and

WHEREAS, as to the roofing materials, the Board asked the applicant to have the materials appropriately evaluated and to submit proof that they were approved; and

WHEREAS, upon its own review of the materials, the Fire Department stated that although the chemical used to treat the thatched material was approved through 2009, it needed to be re-applied annually and the applicant was unable to provide proof that this had occurred; and

WHEREAS, further, the Fire Department stated that the chemical compound was not approved for exterior surfaces and that it would prefer to see a flame proof material used, rather a fire retardant material; and

WHEREAS, the Board directed the applicant to have DOB review the proposed roofing materials; and

WHEREAS, in response, the applicant revised the proposal to include a corrugated metal roof, with the straw material as an interior, fire-treated finish only; and

WHEREAS, the Fire Department also recommends that the entire building be sprinklered; and

WHEREAS, the applicant represents that the entire building is sprinklered; and

WHEREAS, in addition to the roofing materials, the Board also expressed concern about the illegally constructed wood decks; and

WHEREAS, after consulting with DOB, the applicant obtained a reconsideration stating that DOB would approve the legalization of the wood decks; and

WHEREAS, accordingly, the Board defers to DOB as to review and approval of the decks; and

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WHEREAS, the Board also expressed concern about the exterior storage areas and the lack of a place of assembly permit; and

WHEREAS, in response, the applicant agreed to remove all but one exterior storage area, and to reconstruct this single area out of masonry; and

WHEREAS, further, the applicant represents that a place of assembly application has been submitted to DOB; and

WHEREAS, the Board notes that during the course of the hearing process, the applicant also resolved several minor violations not addressed above; and

WHEREAS, further, the applicant submitted revised plans reflecting the agreed upon site conditions; and

WHEREAS, given the applicant's representations and commitment to adhere to the noted conditions and all other all Building and Fire Code requirements, the Board agrees that any negative effect on the surrounding neighborhood that the Restaurant might generate is appropriately mitigated; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested legalizations and proposed modifications appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on July 16, 1963 and as subsequently amended, so that as amended this portion of the resolution shall read: "to legalize the following existing site modifications to an eating and drinking establishment and catering hall: the enclosed decks located on the north and east sides of the building, the entry to the cellar on 23rd Avenue, the roofed drive-through on 94th Street, the attached storage area closest to 93rd Street, and interior modifications in the cellar and on the first floor, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 3, 2006'-(6) sheets and 'October 23, 2006'-(1) sheet; and *on further condition*:

THAT the occupancy in the cellar level shall not exceed 240 persons and the occupancy on the first floor (including the enclosed decks) shall not exceed 320 persons (including employees);

THAT the hours of operation shall be limited to 11:00 a.m. to 2:00 a.m. daily;

THAT the accessory parking area shall be attended from 3:00 p.m. to closing daily, and any parking area without a 24 ft. aisle width shall be attended at all times;

THAT there shall be a minimum of 40 parking spaces provided onsite;

THAT there shall be no cabaret use at the Restaurant or cover charge for admittance to the first floor or cellar level;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained within six months of this grant (April 24, 2007);

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy and public assembly

permit shall be obtained within six months of this grant;

THAT DOB shall review and approve all roofing materials and decorative elements at the interior and exterior of the building;

THAT DOB shall review and approve the parking lot layout;

THAT DOB shall review and approve compliance with all egress requirements;

THAT DOB shall review and approve the roofed drive-through;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

(NB 5362/1961)

Adopted by the Board of Standards and Appeals, October 24, 2006.

1289-80-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, Esq., for Fred Straus, owner; Bally Total Fitness, lessee.

SUBJECT – Application August 18, 2006 – Extension of Term of a variance allowing the operation of a Physical Culture establishment in a C1-3/R6 zoning district.

PREMISES AFFECTED – 298 West 231st Street, southwest corner of Tibbett Avenue, Block 5711, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for an extension of the term for a previously granted variance for a Physical Culture Establishment (PCE), which expired on July 21, 2006; and

WHEREAS, a public hearing was held on this application on October 17, 2006 after due notice by publication in *The City Record*, and then to decision on October 24, 2006; and

WHEREAS, the subject premises is located on the southwest corner of West 231st Street and Tibbett Avenue; and

WHEREAS, the site is occupied by a one-story with cellar commercial building with approximately 23, 394 sq. ft. of floor area, located within a C1-3 (R6) zoning district; and

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WHEREAS, the PCE is operated as a Bally's Total Fitness, which occupies all the floor area of the subject building; and

WHEREAS, on July 21, 1981, the Board granted a variance pursuant to ZR § 72-21, to permit the operation of a PCE in the subject building; and

WHEREAS, the term was most recently on June 23, 1998, and expired on July 21, 2006; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant represents that several minor site modifications changes have been made since the most recent Board approval; these modifications include a change to the signage and the elimination of secondary access to the parking lot; and

WHEREAS, additionally, the applicant proposes several interior layout changes; and

WHEREAS, the Board finds that the proposed modifications and a ten-year extension are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 21, 1981, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received September 19, 2006' – (4) sheets; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from July 21, 2006, expiring July 21, 2016;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(Alt. No. 301/1980)

Adopted by the Board of Standards and Appeals, October 24, 2006.

331-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Sean Porter, owner.
SUBJECT – Application April 20, 2006 – Application seeks an extension of term for a special permit under § 73-244 of

the zoning resolution which permitted the operation of an eating and drinking establishment with entertainment and dancing with a capacity of more than 200 persons at the premises. In addition the application seeks a waiver of the Board's Rules and Procedure due the expiration of the term on April 20, 2005. The site is located in a C2-3/R6 zoning district.

PREMISES AFFECTED – 1426-1428 Fulton Street, Southern side of Fulton Street between Brooklyn and Kingston Avenues, Block 1863, Lot 9, 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening and an extension of term of a previously granted special permit for an eating and drinking establishment with entertainment and dancing, which expired on April 20, 2005; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City Record*, to continued hearing on October 17, 2006, and then to decision on October 24, 2006; and

WHEREAS, the site is comprised of two tax lots (Lots 9 and 10), has a lot area of approximately 7,000 sq. ft., and is located on the south side of Fulton Street, between Brooklyn and Kingston Avenues; and

WHEREAS, the site is located within a C2-3 (R6) zoning district and is improved upon with two buildings occupied by an eating and drinking establishment with entertainment and dancing with a capacity of more than 200 persons, doing business as The Lab Banquet Hall and Entertainment Facility; and

WHEREAS, the building on lot 9 is occupied by the main waiting area/lobby and accessory offices and the building on lot 10 is occupied by the entertainment facility; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 20, 1999, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the legalization of an existing eating and drinking establishment with entertainment and dancing with a capacity of more than 200 persons for a term of three years; and

WHEREAS, on April 8, 2002, the Board granted an additional three-year term and permitted the legalization of an addition to the rear of the premises; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, the applicant represents that two interior layout modifications have been made since the last Board

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approval; these include the removal of two stationary bars and the enlargement of the DJ booth; and

WHEREAS, the applicant also states that a new certificate of occupancy (CO) has not been obtained; and

WHEREAS, the applicant represents that the project architect is in the process of filing the application for the new CO and that it will be finalized upon the Board's grant of the requested extension; and

WHEREAS, additionally, the applicant represents that the required public assembly permits will be obtained after the new CO has been secured; and

WHEREAS, at hearing, the Board asked the applicant if there had been any complaints about the operation of the facility, particularly about noise; and

WHEREAS, the applicant responded that the facility had installed sound attenuation measures in accordance with the condition of the original grant and that it had not received any noise complaints; and

WHEREAS, the Board notes that the applicant notified neighbors within a 200 ft. radius of the site and that no complaints were received; and

WHEREAS, based upon the above, the Board finds the requested extension and amendments appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on April 20, 1999, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term of the special permit for an eating and drinking establishment with entertainment and dancing for five years from April 20, 2005, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 4, 2006' – (8) sheets; and *on further condition*:

THAT the term of this grant shall be for five years from the last expiration date, to expire on April 20, 2010;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy and public assembly permit shall be obtained within six months of this grant;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 300782160)

Adopted by the Board of Standards and Appeals, October 24, 2006.

558-71-BZ

APPLICANT – NYC Board of Standards and Appeals.

OWNER OF PREMISES: Dr. Anthony C. Banas

SUBJECT – Application January 27, 2006 – to consider dismissal for lack of prosecution.

PREMISES AFFECTED – 1949 Richmond Avenue, north of Rockland Avenue, Block 2030, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application dismissed for lack of prosecution.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to legalize a change in use from a greenhouse with an accessory retail store (Use Group 6) to an eating and drinking establishment (Use Group 6); and

WHEREAS, the prior variance was granted on November 16, 1971, and permitted, within an R3-2 zoning district, the construction and maintenance of an existing nursery and greenhouse, pursuant to ZR § 72-21; and

WHEREAS, on March 25, 2005, the grant was amended by letter to permit interior renovations; and

WHEREAS, the application was filed on January 27, 2006 by Eric Palatnik, as the applicant on behalf of the fee owner; and

WHEREAS, on March 31, 2006, the Board's examination staff provided the applicant with a notice of objections; and

WHEREAS, the applicant did not provide a written response to the notice of objections or to the examiner's several phone inquiries; and

WHEREAS, accordingly, the Board placed the matter on the calendar for a dismissal hearing; and

WHEREAS, a notice of this hearing was then sent to the applicant on September 26, 2006; the applicant did not respond to this notice; and

WHEREAS, because of the applicant's lack of prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 558-71-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, October 24 2006.

181-38-BZ

APPLICANT – Michael Cosentino, for Michael Innella, owner.

SUBJECT – Application June 28, 2006 – Pursuant to ZR §11-411 for an extension of term to a gasoline service station (Sunoco) for a ten year term which expired on June 3, 2005, and Amendment to covert the existing service repair bays to a

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convenience store and a waiver to file the application more than 30 days after the expiration of term. The premise is located in an R-3A(CD) zoning district.

PREMISES AFFECTED – 410-412 City Island Avenue, corner of Ditmars Street, Block 5645, Lot 6, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Fitzroy Thomas.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M. for continued hearing.

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application August 1, 2006 – Extension of Term Filed pursuant to §11-411 of the zoning resolution for an automotive service station (Use Group 16) with accessory uses located within a C2-3/R7X zoning district. The term expired on July 7, 2006.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for continued hearing.

131-93-BZ

APPLICANT – Eric Palatnik, P.C., for Al & Selwyn, Inc., owner.

SUBJECT – Application April 10, 2006 – Extension of Term/Amendment - pursuant to Z.R. §§11-411 and 11-412 to extend the term of an automotive service station which expired on November 22, 2004. The application seeks an amendment of the previous BSA resolution so as to authorize the enlargement of the existing one story masonry building to include two additional service bays and to expand the auto sales use to accommodate the display of twenty motor vehicles an increase from the previously approved five motor vehicles. The subject premises is located in a C2-2/R5 zoning district.

PREMISES AFFECTED – 3743-3761 Nostrand Avenue, north of the intersection of Avenue “Y”, Block 7422, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for decision, hearing closed.

31-06-BZ

APPLICANT – NYC Board of Standards and Appeals.

OWNER OF PREMISES: Frank Falanga.

SUBJECT – Application February 24, 2006 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 102-10 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

102-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marie & Louis Livan, lessees.

SUBJECT – Application May 23, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling located in the bed of a mapped street (Oceanside Avenue) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located in the bed of mapped street contrary to Section 35, Article 3 of General City Law.

PREMISES AFFECTED – 1 Arcadia Walk, intersection of Oceanside Avenue and Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 7, 2006, acting on Department of Buildings Application No. 402368852, reads in pertinent part:

“A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A2- The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application

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on October 24, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated June 9, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated June 12, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated September 26, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 7, 2006, acting on Department of Buildings Application No. 402368852 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received May 23, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 24, 2006.

125-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative Inc., owner;

SUBJECT – Application June 14, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling located partially in the bed of mapped street (Breezy Point Blvd.) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located in the bed of mapped street and service road is contrary to Department of Buildings Policy. Premises is located within an R4 Zoning District.

PREMISES AFFECTED – 43 Kildare Walk, northeast corner of Kildare Walk and Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 7, 2006, acting on Department of Buildings Application No. 402381445, reads in pertinent part:

“A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35;

A2- The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated June 22, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated July 12, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated September 20, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 7, 2006, acting on Department of Buildings Application No. 402381445 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received June 14, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

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Adopted by the Board of Standards and Appeals,
October 24, 2006.

230-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Donald & Arlyn Kelly, owners.

SUBJECT – Application September 8, 2006 – Reconstruction and enlargement of an existing one family dwelling not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law. Premise is located within the R-4 zoning district.

PREMISES AFFECTED – 107 Beach 220th Street, east side Beach 220th Street, 119.23’ south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 11, 2006, acting on Department of Buildings Application No. 402412135, reads in pertinent part:

“A1-The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, Therefore:

- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
- b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated September 17, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 11, 2006, acting on Department of Buildings Application No. 402412135, is

modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 8, 2006”–one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
October 24, 2006.

286-05-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Ezra G. Levin, owner.

SUBJECT – Application September 14, 2006 – Proposed reconstruction and alteration of an existing building located in the bed of a mapped street (Sycamore Avenue) is contrary to General City Law Section 35. Premises is located within the R1-2 Zoning District.

PREMISES AFFECTED – 5260 Sycamore Avenue, east side of Sycamore between West 252nd Street and West 254th Street, Block 5939, Lot 380, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: James Power.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

337-05-A

APPLICANT – Adam W. Rothkrug, Esq., for Adragna Realty, LLC, owner.

SUBJECT – Application November 23, 2005 – An Appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R4 zoning district. Premises is located in a R4-A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, between Morris Park Avenue and Van Nest Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

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For Applicant: Adam Rothkrug, Irena Adragna and Frank Pono.

For Opposition: Michael R. Treanor and Jenice Toledo.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for continued hearing.

85-06-BZY

APPLICANT – Sanford Solny, for Menachem Realty, Inc., owner.

SUBJECT – Application May 5, 2006 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a mixed use building under the prior R6 zoning district. New zoning district is R4-1.

PREMISES AFFECTED – 1623 Avenue “P”, northwest corner of Avenue “P” and East 17th Street, Block 6763, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for continued hearing.

164-06-A

APPLICANT – Cozen O’Connor Attorneys, for Elba and Jeanette Bozzo, owners.

SUBJECT – Application July 26, 2006 – Appeal filed to challenging the Order of Closure issued by the Department of Buildings on June 30, 2006 pursuant to Administrative Code Section 26-127.2 regarding the use of the basement, first, second and third floor of the subject premises which constitutes an illegal commercial use in a residential district.

PREMISES AFFECTED – 148 East 63rd Street, south side of East 63rd Street, 120’ east of Park Avenue, Block 1397, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Peter Geis.

For Administration: Ingrid Addison and Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for decision, hearing closed.

270-06-A

APPLICANT – Commissioner of New York City Department of Buildings.

OWNER: Elba & Jeanette Bozzo

LESSEE: Relais and Chateaux

SUBJECT – Application October 5, 2006 – to revoke Certificate of Occupancy #26180, on the grounds that the non conforming Use Group 5 of the premises has been discontinued for a period of two or more years and therefore has lapsed pursuant to ZR § 52-61

PREMISES AFFECTED – 148 East 63rd Street, 120’ from south east corner of Lexington Avenue and East 63rd Street, Block 1397, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ingrid Addison, Department of Buildings.

For Opposition: Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 24, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar,
Commissioner Collins and Commissioner Ottley-Brown.

ZONING CALENDAR

199-05-BZ

CEQR #06-BSA-014M

APPLICANT – Joseph Morsellino, Esq., for Stefano Troia, owner.

SUBJECT – Application August 23, 2005 – under Z.R. §72-21 to allow a proposed twelve (12) story residential building with ground floor retail containing eleven (11) dwelling units in an M1-6 Zoning District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 99 Seventh Avenue, located on the southeast corner of 7th Avenue and West 27th Street (Block 802, Lot 77), Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Joseph Morsellino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 29, 2005, acting on Department of Buildings Application No. 104124626, reads in pertinent part:

“ZR 42-10 Proposed layout of 2-11 floors indicate residential use (UG 2) within M1-6 zone is not permitted.

ZR 43-43 Proposed building does not comply with height and setback requirements on 27th (narrow) street front. Show compliance with sky exposure requirement.”; and

WHEREAS, this is an application under ZR § 72-21, to permit within an M1-6 zoning district, the construction of a ten-story, nine-unit mixed-use residential and retail multiple dwelling, with a total Floor Area Ratio (FAR) of 9.99, a street wall height of 107 ft., and a total height of 130 ft., which does not comply with zoning requirements for use, street wall height, and set back, contrary to ZR §§ 42-10 and 43-43; and

WHEREAS, initially, the applicant proposed an eleven-story, 10-unit mixed-use dwelling, with a total FAR of 11.0, a street wall height of 85 ft. and a total height of 187 ft.; and

WHEREAS, as discussed more fully below, the Board expressed concerns about an 11.0 FAR building representing the minimum variance, and also noted that the 85 ft. street wall and

the 187 ft. overall height did not comport with the character of the neighborhood, especially along Seventh Avenue; and

WHEREAS, in particular, the Board noted that the FAR of 11.0 was based upon the presumption that the existing building at the site would be retained and enlarged, which was actually not proposed; and

WHEREAS, the applicant then revised the proposal to an FAR of 10.0, but maintained the street wall height at 85 ft.; and

WHEREAS, the Board continued to object, and the applicant subsequently revised the proposal to the current version; and

WHEREAS, a public hearing was held on this application on June 6, 2006, after due notice by publication in the *City Record*, with continued hearings on July 18, 2006, September 12, 2006 and October 17, 2006, and then to decision on October 24, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 5, Manhattan, recommends approval of the original version of this application; and

WHEREAS, the condominium association and board of managers of 291 Seventh Avenue initially appeared in opposition to this application, stating that the applicant had not established that the site conditions were unique, that the building as initially proposed did not reflect the minimum variance, and that the Environmental Assessment Statement was deficient in that the impact of excavation was not addressed; and

WHEREAS, the Board notes that after the applicant revised the proposal to the current version, the opposition did not appear or make further submissions; and

WHEREAS, as reflected below, the applicant addressed the concerns about uniqueness and minimum variance; and

WHEREAS, further, excavation of the site must occur in compliance with all applicable provisions of the Building Code and other laws; and

WHEREAS, accordingly, the Board finds that none of the opposition’s arguments are persuasive or relevant; and

WHEREAS, the subject premises is a 1,683 sq. ft. corner lot with 24’-9” of frontage on Seventh Avenue (a wide street) and 68’-0” of frontage along West 27th Street (a narrow street), and is situated in the Chelsea neighborhood of Manhattan; and

WHEREAS, the site is currently developed with a 3,366 sq. ft., one- and two-story with cellar commercial building, occupied by a restaurant; and

WHEREAS, as noted above, the applicant proposes the demolition of this existing building, and the construction of a new ten-story building; and

WHEREAS, the proposed residential use is on floors two through ten; a duplex penthouse is proposed for the top floor, where the building sets back 10 feet on both frontages; and

WHEREAS, commercial use is proposed for the first floor, the first floor mezzanine and the cellar; and

WHEREAS, the Board notes that the building will be

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designed using “green” environmentally friendly technology, but also notes that the costs related to such features were not considered by the Board as premium costs that would add to the degree of relief requested; and

WHEREAS, the non-conforming and non-complying parameters of the proposed building are as follows: UG 2 residential use (UG 2 is not permitted); residential floor area of 15,082 sq. ft. (residential floor area is not permitted); a residential FAR of 8.97 (residential FAR is not permitted); nine dwelling units (dwelling units are not permitted); a street wall height of 107 ft. (a street wall height of 85 ft. is the maximum permitted); a setback of 10 ft. on both frontages (a setback of 20 ft. is required on West 27th Street and a setback of 15 ft. is required on Seventh Avenue); and a sky exposure plane non-compliance; and

WHEREAS, the lack of compliance with the above-mentioned use and bulk provisions necessitates the instant variance application; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and an unnecessary hardship in developing the site in conformance and compliance with applicable regulations: (1) the site is unusually shallow and narrow; and (2) the site is unusually small; and

WHEREAS, while the Board acknowledges that the site is small, shallow and narrow, it asked the applicant to further establish that such conditions were unique to the site, and requested a study of a broader area for comparison; and

WHEREAS, the applicant then submitted a revised land use map, showing the area along Seventh Avenue from West 25th Street to West 31st Street; and

WHEREAS, in response to the concerns of the Board, the applicant cited to this revised map and noted that the site is the only small lot in this area that is both narrow and shallow to the degree noted; and

WHEREAS, the applicant further notes that of the 113 lots in this area, only five lots have a narrow frontage and shallow depth similar to the subject lot; and

WHEREAS, the Board agrees that the shallowness, narrowness and size of the subject lot are unusual in the immediate area and in the subject M1-6 zoning district; and

WHEREAS, the Board also agrees that the small size of the lot does not allow for the creation of efficient floor plates that could sustain a viable manufacturing/commercial development; and

WHEREAS, based upon the above, the Board finds that the above-mentioned unique physical conditions inherent to the subject zoning lot, namely, the smallness, shallowness and narrowness of the site, create unnecessary hardship and practical difficulty in developing it in conformance and compliance with the applicable regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenario: a 10.2 FAR, 18-story office building, utilizing the existing building’s perimeter walls; and

WHEREAS, the study concluded that this scenario would

not result in a reasonable return, due to increased construction costs related to the size and depth of the site, as well as its corner location and the poor returns that the small floor plates would generate; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that development in strict compliance and conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the surrounding area is characterized by buildings occupied by residential use, and cites to residential development above the lowest floor in buildings on the same block, and in the general area; and

WHEREAS, more specifically, the applicant cites to an eleven-story condominium on the same block; and

WHEREAS, the applicant also cites to two 20-story condominiums location on the block across West 27th Street; and

WHEREAS, the applicant notes that there are other condominium buildings along West 27th Street; and

WHEREAS, finally, the applicant notes that Block 775, which is diagonally across from the subject block, was recently rezoned C6-3X, and allows residential development as of right; the applicant cites to an 18-story multiple dwelling on this block; and

WHEREAS, the Board agrees that the immediate and surrounding area has a sufficient residential context such that additional residential use will not have a negative effect on the character of the neighborhood; and

WHEREAS, however, as noted above, the Board determined that the initial proposal did not comport with the character of the neighborhood in terms of its bulk because no context exists for an 11.0 FAR, 187 ft. high building, with a street wall height of 85 ft. along Seventh Avenue; and

WHEREAS, the Board notes that the overwhelming majority of buildings in the neighborhood are high street wall loft-style buildings that do not setback at 85 ft.; and

WHEREAS, the Board notes that relatively recent rezonings in Southeast Chelsea, along Avenue of the Americas, and along Seventh Avenue, as well as the Ladies Mile rezoning, all allow high FAR residential development, but the areas subject to these rezonings all had an existing high street wall context and the new zoning parameters imposed by the rezonings encouraged high street wall development (particularly along Seventh Avenue); and

WHEREAS, for this reason, the Board expressed concern about both the initial and intermediate proposals, and suggested that the applicant propose a building with a different envelope; and

WHEREAS, specifically, the Board asked the applicant to analyze a building with a 9.0 FAR (which would comport with the allowable FAR in a C6-3X zoning district) and a building with a 10.0 FAR (which would comport with the allowable FAR in a C6-4A zoning district); and

WHEREAS, as noted above, the applicant then modified the proposal to comport with a C6-4A-equivalent envelope; the building is now at 9.99 FAR, with a street wall height at 107 ft.

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and a total height of 130 ft., which is consistent with the high street wall context and lesser overall building heights along Seventh Avenue; and

WHEREAS, the Board concludes that the envelope of the building as now proposed would be more consistent with both the character of the neighborhood as well as the land use policies for the area; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather the result of the above-mentioned unique physical conditions inherent to the subject zoning lot, which has been in its current configuration since prior to 1961; and

WHEREAS, in terms of establishing the minimum variance, the Board notes that for the initial proposal scenario, it questioned the proposed sell-out value for the residential units; and

WHEREAS, in response, the applicant submitted a supplementary letter explaining that the comparables used to establish the average sell-out value were in fact reasonable comparables; and

WHEREAS, the Board finds that this letter is a sufficient response to its concerns, and notes that the same comparables were used to establish sell-out value in the later feasibility studies, including that of the final proposal; and

WHEREAS, in addition to analyzing the conforming office scenario, the initial proposal and the final proposal, the applicant also submitted a financial analysis of the C6-3X scenario mentioned above; and

WHEREAS, the applicant concludes that such a scenario would not realize a reasonable return; and

WHEREAS, accordingly, the Board finds that the instant proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA014M, dated September 7, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and

Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance to permit within an M1-6 zoning district, the construction of a ten-story, nine-unit mixed-use residential and retail multiple dwelling, with a total Floor Area Ratio of 9.99, a street wall height of 107 ft., and a total height of 130 ft., which does not comply with zoning requirements for use, street wall height, and set back, contrary to ZR §§ 42-10 and 43-43, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 23, 2006"- nine (9) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: ten stories, nine dwelling units, a residential FAR of 8.97; a commercial FAR of 1.02; a total FAR of 9.99; a total height of 130'-4"; a street wall height of 107 ft.; a setback of 10 ft. on all frontages; and sky exposure planes as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 24, 2006.

58-06-BZ

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CEQR #06-BSA-071M

APPLICANT – Sheldon Lobel, P.C., for Rose Weinstein, owner.

SUBJECT – Application March 31, 2006 – Zoning variance under §72-21 to allow retail use (U.G. 6) to be located on the first floor and cellar level of an existing building in an M1-5B district; contrary to §42-10.

PREMISES AFFECTED – 499 Broadway, 100’ north of Broome Street, Block 484, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel and Doris Diether, Community Board #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 17, 2006 acting on Department of Buildings Application No. 104356233, reads in pertinent part:

“Proposed commercial use group 6 is not permitted as of right in M1-5B zoning district – this is contrary to section 42-10 ZR.

Proposed project is also contrary to ZR 42-14(d)(2)(b) which specifies the use regulations for commercial and manufacturing uses below the floor level of the second story in M1-5B.”; and

WHEREAS, this is an application under ZR § 72-21, to permit within an M1-5B zoning district within the SoHo Cast Iron Historic District, the conversion of the first floor and cellar of an existing four-story building to a commercial retail use (UG 6), contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on September 26, 2006, after due notice by publication in the *City Record*, and then to decision on October 24, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 2, Manhattan, recommends approval of the application, with the recommendation that the entrance to the proposed retail use be on Broadway rather than Mercer Street; and

WHEREAS, the subject premises is located on a through lot located between Broadway and Mercer Street, approximately 100 feet north of Broome Street; and

WHEREAS, the site has a lot area of approximately 4,000 sq. ft.; and

WHEREAS, the lot has a depth of 200 feet, with a width of 20’-5 ¾” on Mercer Street and 19’-9 ½” on Broadway; and

WHEREAS, the site is currently occupied with a four-story mixed-use building with an interior court in the middle of

the building, which is open above the first floor; and

WHEREAS, the applicant proposes to divide the first floor and cellar level into separate spaces for commercial retail use with access from the Mercer Street and Broadway frontages; and

WHEREAS, the three upper floors are occupied by Joint Living Work Quarters for Artists (JLWQA) (UG 17D) and the first floor and cellar is occupied by storage (UG 16); and

WHEREAS, the uses on the three upper floors will not change and are not included in the proposal; and

WHEREAS, the site is the subject of two prior Board actions, under BSA Cal. Nos. 267-61-A (sprinklering) and 502-83-ALC (conversion contribution), and a November 1984 special permit from the City Planning Commission (CPC) permitting JLWQA use on the upper floors; and

WHEREAS, the Board notes that a CPC special permit is available for the requested use change; and

WHEREAS, however, the applicant states that it cannot pursue this special permit because the subject space is currently occupied by a tenant and therefore the applicant cannot make a good faith marketing attempt as required; and

WHEREAS, because UG 6 retail is not permitted as of right or below the second floor in an M1-5B zoning district, the requested waivers are necessary; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the lot is narrow, and (2) the existing building is obsolete for manufacturing use; and

WHEREAS, as to narrowness, the applicant represents that the narrow width of the through lot results in narrow, relatively small floor plates that are inefficient for conforming uses, such as warehouses and wholesale distributors; and

WHEREAS, the applicant asserts that the floor plates would be impractical for either industrial or office use as it would be difficult to build out the narrow space either as a whole or divided for multiple uses with access from the separate frontages; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that the site is the narrowest lot within a 400 ft. radius of the site, as evidenced by a submitted radius diagram; and

WHEREAS, further, the applicant analyzed the 15 through lots within the radius, and determined that the average frontage of such lots is 55 feet; and

WHEREAS, the Board reviewed the submitted diagram and agrees that the subject lot is the only one within the radius with such limited frontage; and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant cites to the following limitations: (1) there is no passenger elevator; (2) access to the building is limited to two pedestrian sized doors on each frontage; and (3) there is no loading dock or space to install one; and

WHEREAS, the applicant represents that it would be difficult to receive and transfer bulk shipments and to provide adequate access to the building for a conforming use based on

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these inefficiencies; and

WHEREAS, the applicant notes that although the obsolescence affects the entire building, the second through fourth floors will be maintained as JLWQA and the applicant is only seeking relief for the cellar level and ground floor; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios, all of which include the existing JLWQA tenants on the upper floors: (1) an as of right warehouse/storage use on the ground floor, (2) an as of right business service establishment on the ground floor, and (3) the proposed ground floor and cellar retail use; and

WHEREAS, the applicant asserts that the two as of right scenarios would result in a negative rate of return and that the proposed use is the minimum necessary to achieve a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that no changes to the exterior of the building are proposed; and

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity are used for commercial purposes on the first floor with residential or loft space above; and

WHEREAS, specifically, the applicant represents that there are 25 commercial stores on the first floor of buildings within the 200 ft. radius, all within M1-5A and M1-5B zoning districts; and

WHEREAS, the Board notes that the applicant obtained a Certificate of No Effect from the Landmarks Preservation Commission for the proposal; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposed represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6

NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA071M, dated July 20, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21, to permit within an M1-5B zoning district within the SoHo Cast Iron Historic District, the conversion of the first floor and cellar of an existing four-story building to a commercial retail use (UG 6), contrary to ZR §§ 42-10 and 42-14; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 5, 2006"—five (5) sheets; and *on further condition*:

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 24, 2006.

176-06-BZ

APPLICANT— Lewis E. Garfinkel, R.A., for Aryeh Adler, owner.

MINUTES

SUBJECT – Application August 16, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family home which proposes less than the minimum rear yard, ZR 23-47, side yards, ZR 23-461, open space, ZR 23-141 and exceeds the permitted FAR, ZR 23-141. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1253 East 28th Street, east side of East 28th Street, Block 7646, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis Garfinkel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 15, 2006, acting on Department of Buildings Application No. 302180333, reads in pertinent part:

- “1. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
 2. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Open Space Ratio (OSR) is less than the required 150%.
 3. Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5’-0”.
 4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30’-0”.”;
- and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 17, 2006, after due notice by publication in *The City Record*, and then to decision on October 24, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, the subject lot is located on the east side of East 28th Street, between Avenue L and Avenue M; and

WHEREAS, the subject lot has a total lot area of 3,000 sq. ft., and is occupied by a 2,244 sq. ft. (0.748 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,244 sq. ft. (0.748 FAR) to 2,411.85 sq. ft. (0.80

FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 61.6 percent to 56.8 percent (the minimum permitted open space ratio is 150 percent); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 3’-0” and the complying side yard of 10’-8” (side yards totaling 13’-0” are required with a minimum width of 5’-0” for each); and

WHEREAS, the proposed enlargement will reduce the rear yard from 30’-2” to 20’-0” (the minimum rear yard required is 30’-0”); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, the proposed enlargement will be one story with a cellar and will be located entirely at the rear of the existing home; and

WHEREAS, the Board notes that the enlargement will not be clearly visible from the street; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, the Board also notes that the FAR request is reasonable as it represents a small increase to the existing FAR; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received August 16, 2006”–(9) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

MINUTES

THAT the following shall be the bulk parameters of the building and the yard coverage and dimensions: a total floor area of 2,411.85 sq. ft., a total FAR of .80, one side yard of 3'-0", one side yard of 10'-8", a rear yard of 20'-0", and an open space ratio of 56.8 percent, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 24, 2006.

165-05-BZ

APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.

SUBJECT – Application July 25, 2005 – Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.

PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156'-3" East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for deferred decision.

288-05-BZ

APPLICANT – Harold Weinberg, P.E., for Maria Musacchio, owner.

SUBJECT – Application September 16, 2005 – Pursuant to ZR §73-622 Special Permit for an In-Part Legalization to a single family home which exceeds the allowable floor area ratio and is less than the allowable open space, 23-141 and exceeds the maximum allowable perimeter wall height, 23-631. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 1060 82nd Street, South side, 197'3" west of 11th Avenue, between 10th Avenue, Block 6012, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Harold Weinberg, Maria Musacchio, Philip Musacchio and Eduardo Nuñez.

For Opposition: Adriano Santini, Violet Santini, Thomas A. Delorazzo and Ted K.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M. for decision, hearing closed.

290-05-BZ

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated April 19, 2006 – Variance pursuant to Z.R. §72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 & 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant:

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

60-06-A

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application April 5, 2006 – Request pursuant to Section 666 of the New York City Charter for a reversal of DOB's denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant:

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

29-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Iliva Honovich, owner.

SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR § 72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards

MINUTES

requirements; contrary to ZR §§ 23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district. PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th Street and East 19th Street, Block 7463, Lots 47, 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for continued hearing.

36-06-BZ

APPLICANT – Sheldon Lobel, P.C., for The RNR Group Ltd., owner.

SUBJECT – Application March 1, 2006 – Special Permit pursuant to Z.R. §73-53 to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,485 square feet.

PREMISES AFFECTED – 2125 Utica Avenue, east side of Utica Avenue between Avenue M and Avenue N, Block 7875, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M. for continued hearing.

41-06-BZ

APPLICANT– Steven Sinacori, Stadtmauer Bailkin, LLP, for New York Hospital Queens, owner.

SUBJECT – Application March 9, 2006 – Variance pursuant to Z.R. §72-21 to allow a predominantly below-grade group parking facility, accessory to New York Hospital Queens, to violate applicable front and side yard requirements. Site is located within R4 and R4/C1-2 districts (proposed as part of a Large Scale Community Facility Plan); contrary to Z.R. §24-33, §24-34, and §24-35. 42-06-BZ: Variance pursuant to Z.R. §72-21 to allow a new five-story hospital building, to be constructed on the existing campus of New York Hospital – Queens, to violate applicable height, setback and rear yard equivalent requirements. Project site is located within an R4 district (proposed as R6 within Large Scale Community Facility Plan); contrary to Z.R. §24-522 and §24-382.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West side of 141st Street, Block 6410, Lots 1, 19, 21, 24, 25, 26, 28, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Steven Sinacori, Francis Gunther and Chuck Apecian, Community Board #7Q.

For Opposition: Ray DiPaoci, Monica Pinzon, Mae Montagna and Ezeucca Solano.

ACTION OF THE BOARD – Laid over to November

14, 2006, at 1:30 P.M., for decision, hearing closed.

42-06-BZ

APPLICANT– Steven Sinacori, Stadtmauer Bailkin, LLP for New York Hospital Queens, owner.

SUBJECT – Application March 9, 2006 – Variance pursuant to Z.R. §72-21 to allow a predominantly below-grade group parking facility, accessory to New York Hospital Queens, to violate applicable front and side yard requirements. Site is located within R4 and R4/C1-2 districts (proposed as part of a Large Scale Community Facility Plan); contrary to Z.R. §24-33, §24-34, and §24-35. 42-06-BZ: Variance pursuant to Z.R. §72-21 to allow a new five-story hospital building, to be constructed on the existing campus of New York Hospital – Queens, to violate applicable height, setback and rear yard equivalent requirements. Project site is located within an R4 district (proposed as R6 within Large Scale Community Facility Plan); contrary to Z.R. §24-522 and §24-382.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West side of 141st Street, Block 6410, Lots 1, 19, 21, 24, 25, 26, 28, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Steven Sinacori and Francis Gunther.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M., for decision, hearing closed.

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. 42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for adjourned hearing.

106-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Mendel Bobker, owner.

SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to allow the enlargement of a two-family residence which exceeds the allowable floor area ratio per ZR 23-141, side yards less than the minimum per ZR 23-461 and proposes a rear yard less than the minimum required per ZR 23-47. The premise is located in an R-2 zoning

MINUTES

district.

Jeff Mulligan, Executive Director

PREMISES AFFECTED – 1436 East 28th Street, west side of East 28th Street, 280 between Avenue N and Kings Highway, Block 7681, Lot 62, Borough of Brooklyn.

Adjourned: 3:30 P.M.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Frank Puleo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 1:30 P.M. for decision, hearing closed.

121-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum, Inc., owner.

SUBJECT – Application June 12, 2006 – Application filed pursuant to sections 11-411 & 11-12 of the zoning resolution to request the re-establishment of the previously granted variance permitting the operation of an automotive service station in a R7-1 zoning district and to legalize certain minor amendments made to the previously approved plans.

PREMISES AFFECTED – 495 East 180th Street, northwest corner of the intersection formed between 180th Street and Bathgate Avenue, Block 3047, Lot 21, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

158-06-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Debbie Tokayer, owner.

SUBJECT – Application July 18, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family residence which is contrary to ZR 23-141 for open space and floor area, ZR 23-461 for less than the minimum side yards and ZR 23-47 for less than the required rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1410 East 22nd Street, West side of East 22nd Street, 380’ south of Avenue M, Block 7657, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M. for decision, hearing closed.

BULLETIN

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November 9, 2006

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Tuesday, October 31, 2006**

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DOCKETS

New Case Filed Up to October 31, 2006

286-06-BZ

1847 60th Street, Northside of 60th Street between 18th Avenue and 19th Avenue, Block 5512, Lot 56, Borough of **Brooklyn, Community Board: 12**. Under 72-21-To permit the proposed synagogue which does not comply with floor area (24-162a); side yards(24-35) and Number of stories at rear (24-33).

287-06-BZ

32-12 23rd Street, 33rd Avenue and Broadway, Block 555, Lot 36, Borough of **Queens, Community Board: 1**. Under 72-21-Legalization of conversion of one dwelling unit in a new building.

288-06-BZ

223-07 Hempstead Avenue, Northside of Hempstead Avenue between 223rd and 224th Streets, Block 10796, Lot 4, Borough of **Queens, Community Board: 13**. Under-72-21-To allow the development of a two-story and cellar church.

289-06-BZ

4025 Laconia Avenue, Between East 228th Street and East 227th Street, Block 4874, Lot 1, Borough of **Bronx, Community Board: 5**.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

DECEMBER 5, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 5, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

308-79-BZ

APPLICANT – Stuart A. Klein, Esq., for St. George Tower & Grill Owners Corp., owner; St. George Health & Racquet Assoc. LLC; lessee.

SUBJECT – Application July 3, 2006 - Extension of Term/Amendment/Waiver - To allow the continuation of an existing Physical Culture Establishment, located in a R7-1 (LH-1) zoning district, which was granted pursuant to section 73-36 of the zoning resolution. The amendment seeks to make minor interior modifications.

PREMISES AFFECTED – 43 Clark Street aka 111 Hicks Street, south west corner of Hicks and Clark Streets, Block 231, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #2BK

619-83-BZ

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver-for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

190-92-BZ/191-92-A

APPLICANT – Alfonso Duarte, for 180 Tenants Corp., owner; Waterview Parking Inc., lessee.

SUBJECT – Extension of Term to allow the use of surplus parking spaces for transient parking which was granted contrary to Section 60, Sub. 1b of the Multiple Dwelling Law. R10A & R8B zoning district.

PREMISES AFFECTED – 180 East End Avenue, north side between East 88th and East 89th Streets, Block 1585, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

44-06-BZII

APPLICANT– Rothkrug, Rothkrug & Spector, for Philip & Laura Tuffnel, owner.

SUBJECT – Application October 13, 2006 – Rehearing of a previously granted variance (72-21) the vertical enlargement of an existing single family home, to permit notification of affected property owners and public officials in an R3A zoning district.

PREMISES AFFECTED – 150-24 18th Avenue, south side of 18th Avenue, 215’ east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

174-06-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for PSCH, owner.

SUBJECT – Application August 11, 2006 - Proposed construction and enlargement of a community facility (PSCH) located within the bed of mapped street (119th Street) is contrary to Section 35 of the General City Law. M1-1 Zoning District

PREMISES AFFECTED – 22-44 119th Street, northwest corner of 23rd Avenue and 119th Street, Block 4194, Lot 20, Borough of Queens.

COMMUNITY BOARD #7Q

273-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary Ellen & Joseph Duggan, lessees.

SUBJECT – Application October 11, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law. R-4 zoning district.

PREMISES AFFECTED – 113 Beach 221st Street, east side of Beach 221st Street, 240’ south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

CALENDAR

DECEMBER 5, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 5, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

239-04-BZ

APPLICANT- Agusta & Ross, for 341 Scholes Street, LLC, owner.

SUBJECT - Application June 24, 2004 - Variance (72-21) to permit the proposed residential occupancy, Use Group 2, within an existing loft building, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED - 225 Starr Street, northerly side of Starr Street, 304' east of Irving Avenue, Block 3188, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #4BK

99-06-BZ

APPLICANT- Patrick W. Jones, P.C., for Norsel Realities c/o Steinberg & Pokoik, owners; Mothers Work, Inc., lessee.

SUBJECT - Application May 15, 2006 - Special Permit 73-36 - to permit the legalization of an existing physical cultural establishment (Edamame Spa) located in the cellar portion of a 25 story commercial building located within a C5-3 (MID) Zoning District.

PREMISES AFFECTED - 575 Madison Avenue (aka 53/57 East 56th Street, aka 28/30 East 57th Street) East side of Madison Avenue, between East 56th and East 57th Streets, Block 1292, Lot 52, Borough of Manhattan.

COMMUNITY BOARD # 5M

122-06-BZ

APPLICANT- Sheldon Lobel, P.C., for Revelation Development, Inc., owner.

SUBJECT - Application June 12, 2006 - Variance (Section 72-21) to permit the proposed enlargement of an existing medical office building and construction of residences without the required front and side yard. The Premise is located in a portion of an R5 and a portion of a C2-3/R5 zoning district. The proposal is seeking waivers relating to 23-45 and 24-34 (Front yard) and 23-462 and 24-35 (Side Yard).

PREMISES AFFECTED - 2671 86th Street, West 12th and West 11th Streets, Block 7115, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #15BK

137-06-BZ

APPLICANT- Rothkrug Rothkrug & Spector, LLP, for Adragna Realty, LLC., owner.

SUBJECT - Application June 30, 2006 - Variance (72-21) for the proposed construction of a two-family dwelling on a vacant lot that does not provide a required side yard (23-461) and does not line up with front yard line of adjacent lot (23-45 (b)) in an R4A zoning district.

PREMISES AFFECTED - 1717 Hering Avenue, west side of Hering Avenue 325' south of Morris Park Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD # 11BX

180-06-BZ

APPLICANT- Kramer Levin Naftalis & Frankel, LLP, for Yeshiva University, owner.

SUBJECT - Application August 18, 2006 - Zoning variance to allow a new six (6) story academic building (UG 3) for Yeshiva University that would violate applicable lot coverage (§ 24-11), rear yard (§ 24-36 and § 24-391) and height and setback requirements (§ 24-522).

PREMISES AFFECTED - 515 West 185th Street, northwest corner of Amsterdam Avenue and West 185th Street, Block 2156, Lots 46, 61, 64, 146, 147, Borough of Manhattan.

COMMUNITY BOARD #12M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, OCTOBER 31, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, August 15, 2006 as printed in the bulletin of August 24, 2006, Volume 91, No. 33. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

413-50-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application October 12, 2005 – Pursuant to ZR §11-411 and §11-412 for an Extension of Term of a Gasoline Service Station-UG 16 (BP North America) for ten years which expired on November 18, 2005. This instant application is also for an Amendment to legalize modifications to the previously approved signage on site.

PREMISES AFFECTED – 691/703 East 149th Street, northwest corner of Jackson Avenue, Block 2623, Lot 140, Borough of The Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a reopening, an amendment to the approved plans, and an extension of term for a previously granted variance for a gasoline service station, which expired on November 18, 2005; and

WHEREAS, a public hearing was held on this application on June 13, 2006 after due notice by publication in *The City Record*, with continued hearings on July 18, 2006, August 22, 2006, and then to decision on October 31, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, including Commissioner Collins; and

WHEREAS, Community Board, 15, Bronx, recommends approval of this application on the condition that the tenant be evicted; and

WHEREAS, the site is located on the northwest corner of East 149th Street and Jackson Avenue; and

WHEREAS, the site is located within a C2-4 (R7-1) zoning district and is improved upon with a gasoline service

station; and

WHEREAS, the Board has exercised jurisdiction over lot 140 since November 14, 1950 when, under the subject calendar number, the Board granted a variance for the maintenance and construction of a gasoline service station; and

WHEREAS, at the time this prior grant was made, lot 140 encompassed more lot area than it does now; and

WHEREAS, specifically, on January 25, 1994, under the subject calendar number, the 1950 grant was amended to permit the subdivision of lot 140 into two tax lots – lot 141 (the “adjacent lot”), with frontage along the northeast corner of Trinity Avenue and East 149th Street; and lot 140 (the “subject lot”), with frontage (as indicated above) along the northwest corner of East 149th Street and Jackson Avenue; and

WHEREAS, the adjacent lot is now occupied by a stand-alone parking lot; the subject lot is still occupied by a service station; and

WHEREAS, only the subject lot remains under the jurisdiction of the Board; and

WHEREAS, one of the conditions of the 1994 grant was that a chain link fence be installed and maintained on lot 140, along the full length of the lot line separating the two lots; and

WHEREAS, on May 20, 1997, the 1994 grant was extended for a further term, which expired on November 18, 2005; and

WHEREAS, the applicant now requests an additional ten-year term and an amendment to permit changes to the previously approved signage for the service station; and

WHEREAS, the applicant represents that new signage is required to reflect the company name and logo of a prospective operator, who will replace the existing tenant; and

WHEREAS, the applicant represents that the proposed signage complies with C2-4 zoning district regulations; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance, including a change to signage; and

WHEREAS, however, at hearing, the Board expressed concerns about the following site conditions, which appeared to deviate from the prior grant and from the previously approved plans: (1) the large number of cars parked and apparently for sale on the subject lot, (2) the lack of a fence with a closed gate, separating the subject lot from the adjacent lot, and (3) excessive and impermissible signage, including some signs posted on the sidewalk; and

WHEREAS, as a general response to all of these concerns, the applicant stated that the current tenant was uncooperative and was deliberately failing to comply with the prior grants; and

WHEREAS, further, the applicant responded that the tenant at the site was not conducting business in accordance with the lease and would be evicted; and

WHEREAS, the applicant stated that the eviction was scheduled for October 27, 2006; and

WHEREAS, the applicant represents that all of the

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conditions imposed by the Board in prior grants cannot be implemented until the tenant leaves the site; and

WHEREAS, the applicant submitted a letter from the owner of the site to the tenant regarding the plans to evict; and

WHEREAS, the Board understands that the tenant is uncooperative, and accepts the letter as evidence that the owner will evict the tenant and cure the outstanding conditions; and

WHEREAS, notwithstanding this explanation, the Board addressed the above-mentioned concerns, and asked the applicant to respond to each; and

WHEREAS, specifically, as to the vehicles parked on site, the Board notes that the approved plans only allow for two parking spaces, yet it observed through a site visit and the review of photographs that there were at least twelve vehicles parked on the subject lot; and

WHEREAS, further, it appeared that the vehicles were for sale; and

WHEREAS, the Board informed the applicant that its past grant did not allow for the sale of cars on the subject lot; and

WHEREAS, the applicant conceded the non-compliance, but contended that the owner of the site did not authorize the tenant to permit parking in excess of the two spaces permitted as per the approved plans; and

WHEREAS, nonetheless, the Board directed the applicant to restrict parking at the site to accessory parking for the service station and to prohibit the sale of cars; and

WHEREAS, the Board also directed the applicant to post signs indicating that parking was not permitted at the site; and

WHEREAS, as to the fence, the Board observed that it did not extend the full length of the lot line, as required by the previously approved plans, and that there was an open gate in the fence; and

WHEREAS, at hearing, the Board asked the applicant if there was any connection between the two lots; and

WHEREAS, the applicant responded that there is no relationship between the two lots; and

WHEREAS, accordingly, the Board directed the applicant to close the gate and any other physical connection between the two lots, and to extend the fence along the entire lot line; and

WHEREAS, as to the signage, the Board observed signs on the subject lot that appeared to be non-compliant with the prior grants, including one sign located on the sidewalk; and

WHEREAS, in response, the applicant agreed to remove all non-compliant signage; and

WHEREAS, further, the applicant submitted a revised signage plan indicating the size and placement of all signage and its compliance; and

WHEREAS, the applicant subsequently submitted photographs reflecting the site with the extended fence and corrected signage, and without the excess cars; and

WHEREAS, the applicant indicated that any remaining outstanding conditions will be resolved upon the eviction of the current tenant; and

WHEREAS, based upon the above representations, the Board finds that the requested extension of term and amendments to the approved plans are appropriate with certain

conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on November 14, 1950, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from November 18, 2005 to expire on November 18, 2015, and to legalize modifications to the previously approved signage at the site *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received October 4, 2006’–(6) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 18, 2015;

THAT accessory parking at the site shall be limited to two cars;

THAT there shall be no car sales at the site;

THAT a permanent fence without any opening shall be maintained between the site and tax lot 141 as indicated on the BSA-approved plans;

THAT the site shall be cleaned and maintained;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the placement and size of all signs shall be as indicated on the BSA-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 200993826)

Adopted by the Board of Standards and Appeals, October 31, 2006.

459-73-BZ

APPLICANT – Sheldon Lobel, P.C., for Joseph Angelone, owner.

SUBJECT – Application August 21, 2006 – Extension of Term of a special permit, granted pursuant to section 73-50 of the zoning resolution, allowing a waiver of the rear yard requirement for a lot located along district boundaries. The premises is located within a C8-1 zoning district.

PREMISES AFFECTED – 2424-48 Flatbush Avenue, southwest corner of the intersection of Flatbush Avenue and Avenue T, Block 8542, Lots 41 and 46, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

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THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a re-opening and an elimination of the term of a previously granted special permit made pursuant to ZR §73-50, which allowed a waiver of the rear yard requirement for a lot divided by district boundaries; and

WHEREAS, a public hearing was held on this application on October 17, 2006, after due notice by publication in *The City Record*, and then to decision on October 31, 2006; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application, on condition that all conditions of prior grants be adhered to and that the sidewalk and curb cut on Flatbush Avenue be repaired; and

WHEREAS, the subject site is located on the southwest corner of Flatbush Avenue and Avenue T, and is within a C8-1 zoning district; and

WHEREAS, on January 8, 1974 the Board granted a special permit under the subject calendar number pursuant to ZR § 73-50, allowing the construction of a one-story enlargement to an existing supermarket that encroaches into the required rear yard, which is divided by a district boundary; the resolution did not specify a term; and

WHEREAS, subsequently, on July 21, 1992, the Board approved the installation of a freight elevator and loading berth; and

WHEREAS, this approval also imposed a term of five years on the grant; and

WHEREAS, this term was extended on July 25, 2000 for ten years from the expiration of the prior grant, to expire on July 21, 2007; and

WHEREAS, on October 22, 2002, the Board granted an extension of time to complete construction and obtain a certificate of occupancy; the certificate of occupancy was obtained in June 2003; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, during its review of this case, the Board observed that the submitted existing conditions plans reflected a change in the parking layout as set forth in the previously approved plans; and

WHEREAS, specifically, two new spaces were added; and

WHEREAS, while the Board did not explicitly approve the parking layout in the past action, it nevertheless asked the applicant whether these modifications interfered with the operation of the loading dock; and

WHEREAS, the applicant responded that there is sufficient space for all of the proposed parking spaces and that access to the loading dock is not blocked; and

WHEREAS, further, the Board also notes that any changes to the parking layout shall be as approved by DOB; and

WHEREAS, additionally, the Board has reviewed the Community Board's request and agrees that all conditions of the

prior resolutions remain in effect and that the sidewalk and curb cuts must be repaired and maintained in good condition; and

WHEREAS, the Board notes that because the enlargement granted in 1992 was for a permanent structure the term should be eliminated.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on January 8, 1974 so that as amended this portion of the resolution shall read: "to eliminate the term of the grant; *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 20, 2006'-(5) sheets; and *on further condition*:

THAT the parking layout shall be as approved by DOB;

THAT the curb cuts and sidewalk shall be repaired and maintained;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and must be implemented prior to the issuance of a new certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (Alt. App. 766/1973)

Adopted by the Board of Standards and Appeals, October 31, 2006.

112-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Doris Laufer, owner.

SUBJECT – Application May 15, 2006 – Pursuant to ZR §72-01 and §72-21 for an Extension of Time to obtain a Certificate of Occupancy which expired on November 20, 2003 for a Community Use Facility-Use Group 4 (Congregation Noam Emimelech) and an Amendment that seeks to modify §24-11, front wall height-ZR §24-521, front yard-ZR §24-31, side yard-24-35, lot coverage-ZR §24-11 and ZR §23-141(b) and off-street parking requirement for dwelling units-ZR §25-22.

PREMISES AFFECTED – 102 and 1406 59th Street, Block 5713, Lots 8 & 10, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for deferred decision.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of

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use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district. PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for continued hearing.

69-95-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Hudson River Park Trust, owner; Chelsea Piers Management Inc., lessee.

SUBJECT – Application August 31, 2006 – Extension of Term/Amendment/Waiver - Application filed on behalf of the Sports Center at Chelsea Piers to Extend the term of the Special Permit which was granted pursuant to section 73-36 of the zoning resolution to allow the operation of a Physical Cultural Establishment in a M2-3 zoning district and expired on August 8, 2005. The application seeks to amend the resolution to reflect the elimination of the Health Club in the North head house of the Chelsea Piers Sport and Entertainment Complex.

PREMISES AFFECTED – Pier 60, 111B Eleventh Avenue, west side of West Street, between West 19th and West 20th Streets, Block 662, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 21, 2006, at 10 A.M., for decision, hearing closed.

363-04-BZ

APPLICANT – Mark A. Levine, Esq., for 6002 Fort Hamilton Parkway Partners, owners.

SUBJECT – Application June 27, 2006 – Amendment to reconfigure internal layout and minor changes to the structural façade. The premise is located in an M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, a/k/a 949-959 61st Street, a/k/a 940-966 60th Street, south of 61st Street, east of Fort Hamilton Parkway, Block 5715, Lots 21 & 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Baruch Nalpern, Elena Kalman and Mitchell

Korbey.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

286-05-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Ezra G. Levin, owner.

SUBJECT – Application September 14, 2006 – Proposed reconstruction and alteration of an existing building located in the bed of a mapped street (Sycamore Avenue) is contrary to General City Law Section 35. Premises is located within the R1-2 Zoning District.

PREMISES AFFECTED – 5260 Sycamore Avenue, east side of Sycamore between West 252nd Street and West 254th Street, Block 5939, Lot 380, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: James Power.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete an enlargement at both the front and rear of an existing two-story and attic single-family dwelling; and

WHEREAS, a public hearing was held on this application on September 12, 2006 after due notice by publication in *The City Record*, with continued hearings on October 17, 2006 and then to decision on October 31, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, the subject premises is a 3,000 sq. ft. site on the east side of East 17th Street, between Avenue N and Avenue O; and

WHEREAS, the premises is improved upon with a two-story and attic single-family home; a one-story enlargement is proposed for the front and rear of the existing building; and

WHEREAS, specifically, the applicant proposes to construct a 9'-4½" deep front extension for the width of the existing home, which includes a new entrance; the enlargement at the rear includes a 5'-0" deep extension abutting a 6'-0" deep greenhouse; and

WHEREAS, the premises is currently located within an

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R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the proposed enlargement complies with the former R6 zoning district parameters as to floor area and front yard requirements; and

WHEREAS, however, on April 5, 2006 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Midwood Rezoning; and

WHEREAS, because the site is now within an R4-1 district, the proposed enlargement creates non-compliance as to floor area and front yard and therefore is not permitted; and

WHEREAS, specifically, the floor area is proposed to be increased from 2,692.5 sq. ft. to 3,039 sq. ft. (2,700 sq. ft., including an attic bonus, is the maximum permitted in the R4-1 district); and

WHEREAS, as to the required front yard, the proposed enlargement provides an 8'-5" front yard (a ten-foot front yard is required in the R4-1 zoning district); and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed enlargement; and

WHEREAS, the applicant is requesting relief under the common law and constitutional theory of vested rights after it failed to obtain a reconsideration from DOB to allow work to continue; during the time that a reconsideration was sought, the statutory time limit to seek relief under ZR § 11-311 expired; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to valid permits; and

WHEREAS, on January 13, 2006, under DOB Application No. (Alt. 2) 302058840, DOB issued a permit (the "Permit") to the owner to enlarge the existing home as discussed above; and

WHEREAS, on April 6, 2006, because of the zoning change, DOB issued a stop-work order on the Permit; and

WHEREAS, on September 6, 2006, DOB sent the applicant a ten-day notice to revoke approvals and permits based on objections raised by a special audit; and

WHEREAS, the applicant subsequently resolved all outstanding objections with DOB; and

WHEREAS, since the Permit is valid, the Board may properly consider all work performed between the time of its issuance and the Enactment Date; and

WHEREAS, assuming that a valid permit has been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change, and where serious loss will result if the owner is denied the right to proceed under the prior zoning, and; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to

the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to enlargements specifically, in Bayswater Health Related Facility v. Karagheuzoff, 37 NY2d. 408, the Court of Appeals held that a vested right had been acquired for a conversion of existing structures to nursing homes because the "main building had already been gutted, its roof and sidewalks opened and exposed to the elements ..."; and

WHEREAS, the Board notes that from these cases, it is apparent that such factors as tangible physical change, including removing portions of the existing building and exposing it to the elements, are relevant to a finding of completion of substantial construction; and

WHEREAS, further, the Board agrees that, under the common law, a completion of substantial construction finding will depend, in part, upon a showing of actual construction work resulting in some tangible change to the structure being altered that is integral to the proposed work; and

WHEREAS, in its written statements and testimony, the applicant represents that: (1) the owner would suffer serious economic harm if unable to complete the enlargement; (2) as of the Enactment Date, substantial construction had been completed; and (3) substantial expenditures were made after the issuance of the Permit; and

WHEREAS, as to serious economic harm, the applicant represents that considerable planning and construction has been expended towards the completion of the enlargements and costs associated with such activities cannot be recouped if construction were not permitted to proceed; and

WHEREAS, specifically, the applicant states that the previously existing front porch has been removed, in anticipation of the construction of the front enlargement, and cannot be replaced without considerable expense; and

WHEREAS, the applicant states that, even without such additional expenses, the owner is contractually obligated to \$111,897.60, the entire total cost of the project; and

WHEREAS, the Board agrees that the owner would suffer serious economic harm if the enlargements were not permitted to be completed; and

WHEREAS, as to substantial construction, the applicant states that work on the proposed enlargement subsequent to the issuance of the Permit involved the following: (1) the removal of the front porch; (2) 100 percent of the excavation and footings at front and rear; (3) 100 percent of the foundations (including foundation walls); (4) the framing of the rear enlargement; and (5) 30 percent of the following: exterior stairs, interior walls, windows, electrical, heating, flooring, and air-conditioning; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: affidavits from the

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architect and contractor as to the amount of work completed, photographs of the site, and invoices for the noted work and materials; and

WHEREAS, on its site visit, the Board observed the completed work described above; and

WHEREAS, the Board has reviewed this documentation and agrees that it establishes that the afore-mentioned work was completed prior to the Enactment Date; and

WHEREAS, the Board concludes that based upon actual work performed under the Permit and its degree of complexity with relationship to the overall project, that substantial construction has been completed sufficient to satisfy the general standards under the common law; and

WHEREAS, at hearing, the Board asked the applicant if it would be viable to proceed with the enlargement at the rear of the home, but eliminate the enlargement at the front; and

WHEREAS, the applicant responded that the two enlargements were integrated into the existing home and that the layout of the entire first floor was designed and would be modified to accommodate both; and

WHEREAS, additionally, the applicant represents that it would not have been feasible to embark on plans for only the rear enlargement and that it would not have done so without plans to also complete the front enlargement; and

WHEREAS, the Board accepts that due to the re-design of the entire first floor, it was only feasible for the applicant to construct enlargements at both the front and the rear of the home; and

WHEREAS, as to substantial expenditures, the applicant states that the expenditures made totaled \$38,397.60 of the total project cost of \$111,897.60 (34 percent); and

WHEREAS, the applicant states that the owner has made irrevocable commitments to the remaining \$73,500.00; and

WHEREAS, in support of this claim, the applicant has submitted invoices, cancelled checks, and accounting statements, which the Board has reviewed and finds credible; and

WHEREAS, based upon the above, the Board finds that the degree of work done and expenditures incurred are sufficient to meet the common law vesting standard; and

WHEREAS, additionally, the Board finds that the work performed up to April 5, 2006 was complex construction that was necessary for the proposed enlargement and that it resulted in tangible change to the existing building; and

WHEREAS, accordingly, the owner has met the standard for vested rights under the common law and is entitled to the requested extension of the Permit and all other related permits for construction of the proposed enlargements.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights and requesting a reinstatement of Alteration Permit No. 302058840, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement for one term of one year from the date of this resolution, to

expire on October 31, 2007.

Adopted by the Board of Standards and Appeals, October 31, 2006.

120-06-A

APPLICANT – Eric Palatnik, P.C., for Harry & Brigitte Schalchter, owners.

SUBJECT – Application June 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Current zoning district is R4-1

PREMISES AFFECTED – 1427 East 17th Street, between Avenue N and Avenue O, Block 6755, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Appeal granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete an enlargement at both the front and rear of an existing two-story and attic single-family dwelling; and

WHEREAS, a public hearing was held on this application on September 12, 2006 after due notice by publication in *The City Record*, with continued hearings on October 17, 2006 and then to decision on October 31, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, the subject premises is a 3,000 sq. ft. site on the east side of East 17th Street, between Avenue N and Avenue O; and

WHEREAS, the premises is improved upon with a two-story and attic single-family home; a one-story enlargement is proposed for the front and rear of the existing building; and

WHEREAS, specifically, the applicant proposes to construct a 9'-4½" deep front extension for the width of the existing home, which includes a new entrance; the enlargement at the rear includes a 5'-0" deep extension abutting a 6'-0" deep greenhouse; and

WHEREAS, the premises is currently located within an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the proposed enlargement complies with the former R6 zoning district parameters as to floor area and front

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yard requirements; and

WHEREAS, however, on April 5, 2006 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Midwood Rezoning; and

WHEREAS, because the site is now within an R4-1 district, the proposed enlargement creates non-compliance as to floor area and front yard and therefore is not permitted; and

WHEREAS, specifically, the floor area is proposed to be increased from 2,692.5 sq. ft. to 3,039 sq. ft. (2,700 sq. ft., including an attic bonus, is the maximum permitted in the R4-1 district); and

WHEREAS, as to the required front yard, the proposed enlargement provides an 8'-5" front yard (a ten-foot front yard is required in the R4-1 zoning district); and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed enlargement; and

WHEREAS, the applicant is requesting relief under the common law and constitutional theory of vested rights after it failed to obtain a reconsideration from DOB to allow work to continue; during the time that a reconsideration was sought, the statutory time limit to seek relief under ZR § 11-311 expired; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to valid permits; and

WHEREAS, on January 13, 2006, under DOB Application No. (Alt. 2) 302058840, DOB issued a permit (the "Permit") to the owner to enlarge the existing home as discussed above; and

WHEREAS, on April 6, 2006, because of the zoning change, DOB issued a stop-work order on the Permit; and

WHEREAS, on September 6, 2006, DOB sent the applicant a ten-day notice to revoke approvals and permits based on objections raised by a special audit; and

WHEREAS, the applicant subsequently resolved all outstanding objections with DOB; and

WHEREAS, since the Permit is valid, the Board may properly consider all work performed between the time of its issuance and the Enactment Date; and

WHEREAS, assuming that a valid permit has been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change, and where serious loss will result if the owner is denied the right to proceed under the prior zoning, and; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to enlargements specifically, in Bayswater Health Related Facility v. Karagheuzoff, 37 NY2d. 408, the Court of Appeals held that a vested right had been acquired for a conversion of existing structures to nursing homes because the "main building had already been gutted, its roof and sidewalks opened and exposed to the elements ..."; and

WHEREAS, the Board notes that from these cases, it is apparent that such factors as tangible physical change, including removing portions of the existing building and exposing it to the elements, are relevant to a finding of completion of substantial construction; and

WHEREAS, further, the Board agrees that, under the common law, a completion of substantial construction finding will depend, in part, upon a showing of actual construction work resulting in some tangible change to the structure being altered that is integral to the proposed work; and

WHEREAS, in its written statements and testimony, the applicant represents that: (1) the owner would suffer serious economic harm if unable to complete the enlargement; (2) as of the Enactment Date, substantial construction had been completed; and (3) substantial expenditures were made after the issuance of the Permit; and

WHEREAS, as to serious economic harm, the applicant represents that considerable planning and construction has been expended towards the completion of the enlargements and costs associated with such activities cannot be recouped if construction were not permitted to proceed; and

WHEREAS, specifically, the applicant states that the previously existing front porch has been removed, in anticipation of the construction of the front enlargement, and cannot be replaced without considerable expense; and

WHEREAS, the applicant states that, even without such additional expenses, the owner is contractually obligated to \$111,897.60, the entire total cost of the project; and

WHEREAS, the Board agrees that the owner would suffer serious economic harm if the enlargements were not permitted to be completed; and

WHEREAS, as to substantial construction, the applicant states that work on the proposed enlargement subsequent to the issuance of the Permit involved the following: (1) the removal of the front porch; (2) 100 percent of the excavation and footings at front and rear; (3) 100 percent of the foundations (including foundation walls); (4) the framing of the rear enlargement; and (5) 30 percent of the following: exterior stairs, interior walls, windows, electrical, heating, flooring, and air-conditioning; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: affidavits from the architect and contractor as to the amount of work completed, photographs of the site, and invoices for the noted work and materials; and

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WHEREAS, on its site visit, the Board observed the completed work described above; and

WHEREAS, the Board has reviewed this documentation and agrees that it establishes that the afore-mentioned work was completed prior to the Enactment Date; and

WHEREAS, the Board concludes that based upon actual work performed under the Permit and its degree of complexity with relationship to the overall project, that substantial construction has been completed sufficient to satisfy the general standards under the common law; and

WHEREAS, at hearing, the Board asked the applicant if it would be viable to proceed with the enlargement at the rear of the home, but eliminate the enlargement at the front; and

WHEREAS, the applicant responded that the two enlargements were integrated into the existing home and that the layout of the entire first floor was designed and would be modified to accommodate both; and

WHEREAS, additionally, the applicant represents that it would not have been feasible to embark on plans for only the rear enlargement and that it would not have done so without plans to also complete the front enlargement; and

WHEREAS, the Board accepts that due to the re-design of the entire first floor, it was only feasible for the applicant to construct enlargements at both the front and the rear of the home; and

WHEREAS, as to substantial expenditures, the applicant states that the expenditures made totaled \$38,397.60 of the total project cost of \$111,897.60 (34 percent); and

WHEREAS, the applicant states that the owner has made irrevocable commitments to the remaining \$73,500.00; and

WHEREAS, in support of this claim, the applicant has submitted invoices, cancelled checks, and accounting statements, which the Board has reviewed and finds credible; and

WHEREAS, based upon the above, the Board finds that the degree of work done and expenditures incurred are sufficient to meet the common law vesting standard; and

WHEREAS, additionally, the Board finds that the work performed up to April 5, 2006 was complex construction that was necessary for the proposed enlargement and that it resulted in tangible change to the existing building; and

WHEREAS, accordingly, the owner has met the standard for vested rights under the common law and is entitled to the requested extension of the Permit and all other related permits for construction of the proposed enlargements.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights and requesting a reinstatement of Alteration Permit No. 302058840, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement for one term of one year from the date of this resolution, to expire on October 31, 2007.

Adopted by the Board of Standards and Appeals, October 31, 2006.

84-06-BZY

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR §11-331 for a four story mixed use building. Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Craig Eaton, Esq.

For Opposition: Mark J. Kurzman, Joel Cohen, Margie Nussbaum, Susan Geen, Rita Francis, Maxine Writsky, Yosef Mitnick, Alan Francis, Bracha Cohen and Murray Yarhusch.

For Administration: Angelina Martinez, Department of Buildings.

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for continued hearing.

153-06-A

APPLICANT – Sheldon Lobel, P.C., for Paul Ullman, owner.

SUBJECT – Application July 12, 2006 - Appeal challenging the Department of Buildings interpretation that Quality Housing Bulk regulations may be utilized by a single-family residence seeking to enlarge in a non-contextual zoning district.

PREMISES AFFECTED – 159 West 12th Street, Seventh Avenue and Avenue of the Americas, Block 608, Lot 69, Borough of Manhattan.

COMMUNITY BOARD #14M

APPEARANCES –

For Applicant: Irv Minkin, Richard J. Davis, Sheldon and Josh Rinesmith.

For Opposition: Shelly Friedman.

For Administration: Janine Gaylard, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 1:00 P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 31, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

393-04-BZ

APPLICANT – Jeffrey Chester of Einbinder & Dunn, for Edythe Kurtzberg, owner; Lucille Roberts Health Clubs, Incorporated, lessee.

SUBJECT – Application December 16, 2006 – Variance pursuant to Z.R. §72-21 – Legalization of a physical culture establishment (Lucille Roberts) located within a C1-2 (R6B) Zoning district.

PREMISES AFFECTED – 41-19 Bell Boulevard, East side of Bell Boulevard, 75' north of 42nd Avenue. Block 6290, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley Brown and Commissioner Hinkson....4
Negative:.....0

Adopted by the Board of Standards and Appeals, October 31, 2006.

33-05-BZ

APPLICANT– Sheldon Lobel, P.C., for Yeshiva Tiferes Yisroel, owner.

SUBJECT – Application February 24, 2005 – Variance pursuant to Z.R. 72-21 to permit the construction of a non-complying school (Yeshiva Tiferes Yisrael). The proposed Yeshiva will be constructed on lots 74, 76, 77, 78 and 79 and will be integrated with the existing Yeshiva facing East 35th Street which was approved in a prior BSA grant on lots 11, 13, 15, and 16. The existing and proposed Yeshiva and their associated lots will be treated as one zoning lot. The subject zoning lot is located in an R5 zoning district. The requested waivers and the associated Z.R. sections are as follows: Floor Area Ratio and Lot Coverage (24-11); Side Yard (24-35); Rear Yard (24-36); Sky Exposure Plane (24-521); and Front Wall Height (24-551).

PREMISES AFFECTED – 1126/30/32/36/40 East 36th Street, west side of East 36th Street, between Avenues K and L, Block 7635, Lots 74, 76, 77, 78, 79, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 24, 2006, acting on Department of Buildings Application No. 301874461, reads, in pertinent part:

- “1. Proposed building exceeds the maximum floor area and FAR permitted by ZR 24-11.
2. Proposed building exceeds the maximum lot coverage permitted by ZR 24-11.
3. Proposed buildings exceeds the maximum front wall height permitted by ZR 24-521.
4. Proposed building does not meet the minimum side yard requirements of ZR 24-35.
5. Proposed building does not meet the minimum rear yard requirements of ZR 24-36.
6. Proposed building violates front setback and sky exposure plane as required by ZR 24-521.
7. Proposed building does not meet the minimum side setback requirements of ZR 24-551.
8. Proposed building does not meet the rear yard equivalent requirements for a through-lot as per ZR 24-382”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a zoning lot within an R5 zoning district, a four-story addition to an existing Use Group 3 religious school, to accommodate additional educational space and accessory dormitory facilities, which violates zoning provisions related to floor area and Floor Area Ratio (FAR), lot coverage, front wall height, side yard, rear yard, front setback and sky exposure plane, side setback, and rear yard equivalent, contrary to ZR §§ 24-11, 24-521, 24-35, 24-36, 24-551 & 24-382; and

WHEREAS, the Board notes that when the case was initially filed, the applicant provided a zoning analysis, plans and statement of facts and findings that only related to the proposed addition (the “New Addition”); and

WHEREAS, as discussed more fully below, the New Addition will be connected to the existing religious school building (the “Existing Building”) and is part of the same zoning lot; and

WHEREAS, further, two of the subject tax lots had not yet been acquired and made part of the larger zoning lot (lots 74 and 76); and

WHEREAS, the applicant subsequently revised its submission to incorporate the two additional tax lots, and to reflect a zoning analysis, plans and statement (and DOB objection sheet) that addresses the zoning lot in its entirety; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 18, Brooklyn,

WHEREAS

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recommends approval of this application; and

WHEREAS, this application was brought on behalf of Yeshiva Tiferes Yisroel (the “Yeshiva”), a not for profit religious educational institution; and

WHEREAS, the subject zoning lot is a through lot, consisting of lots 74, 76, 77, 78 and 79, fronting on East 36th Street (the “New Portion”), and lots 11, 13, 15, & 16, fronting on East 35th Street (the “Old Portion”); and

WHEREAS, the Existing Building occupies the Old Portion, and various dwellings occupy the New Portion; the dwellings are proposed to be demolished; and

WHEREAS, the applicant states that the New Portion has approximately 14,000 sq. ft. of lot area, and the Old Portion has approximately 12,000 sq. ft. of lot area; and

WHEREAS, the Old Portion is subject to a prior Board variance, made under BSA Cal. No. 127-93-BZ (the “Prior Grant”), and granted on October 18, 1994; and

WHEREAS, the Prior Grant permitted the enlargement of an existing school building into the Existing Building, which did not comply with zoning requirements for floor area, side yard, rear yard, height at the front yard line, front and side sky exposure plane, and lot coverage; and

WHEREAS, specifically, the Prior Grant permitted a building with the following parameters: a community facility floor area of 29,587 sq. ft., a community facility FAR of 2.47, lot coverage of 67.25%, a wall height of 56’-6”, a total building height of 60’-0”, a front yard of 10 ft., one side yard of 10 ft., a complying 30 ft. rear yard on only 62% of the rear lot line, no front or side setbacks, and no sky exposure plane compliance for 52% of the building frontage; and

WHEREAS, the Prior Grant was predicated on the programmatic needs of the Yeshiva as such existed then; and

WHEREAS, the Yeshiva subsequently acquired the lots that constitute the New Portion, and now seeks to construct the New Addition thereupon; and

WHEREAS, the applicant states that the New Addition will be partially integrated with the Existing Building; and

WHEREAS, specifically, the applicant states that the students and staff will continue to enter through the entrance on East 35th Street, and that the New Addition and the Existing Building will be joined at the cellar level; and

WHEREAS, the applicant states that New Addition encompasses the following elements: cellar – a new addition to the existing dining room, a new storage area, three new classrooms, an expanded study hall, and a new bathroom; first floor – three classrooms, two offices, a library, lobby, book storage room, computer room, and a small caretakers apartment; second floor – nine classrooms, three storage spaces, four offices, a teacher’s lounge, and a bathroom; third floor – nine dormitory rooms, bathroom and showers, and a gymnasium; fourth floor – nine dormitory rooms, and bathroom and showers; and

WHEREAS, the dorm rooms and the caretaker apartment are considered Use Group 3 accessory uses, and therefore are permitted; and

WHEREAS, the New Addition, when considered in

conjunction with the Existing Building, results in the following non-compliances over the entire zoning lot: a community facility floor area of 61,118 sq. ft. (52,000 sq. ft. is the maximum permitted); a community facility FAR of 2.35 (2.0 is the maximum permitted); a lot coverage of 62% (55% is the maximum permitted); a wall height of 56’-6” for the Existing Building and a wall height of 51’-0” for the New Addition; a rear yard of 30 ft. along 62 percent of the rear lot line of the Old Portion (30 ft. is required along the entirety of the rear lot line) and partial compliance with the rear yard equivalent for the New Portion; no front setback for the Existing Building (a setback is required at 35 ft. above the front yard line and a front setback for 48% of the New Addition’s frontage (a setback along 100 percent of the frontage is required); no sky exposure compliance for the Existing Building and partial compliance for the New Addition; and no side setback for the Existing Building (a setback of one-half the height above yard level is required); and

WHEREAS, the Board notes that due to the addition of the New Portion to the zoning lot, the degree of certain of the waivers made during the Prior Grant actually decrease; and

WHEREAS, for instance, the Prior Grant allowed a community facility FAR of 2.47, while the proposed community facility FAR is now 2.35; and

WHEREAS, the applicant argues that the waivers are necessary to create a building with sufficient floor plates and floor to floor heights sufficient to meet the programmatic needs of the Yeshiva; and

WHEREAS, the applicant notes that the Yeshiva currently has three divisions (Kindergarten through 8th grade; high school; and post-high school), which need to be housed in the same building in order to facilitate a cohesive and comprehensive educational experience and to minimize administrative and facility-related expense; and

WHEREAS, the applicant notes that at the time the Prior Grant was made, the elementary school had an enrollment of 400, the high school had an enrollment of 100, and the post-high school program was very small; and

WHEREAS, the applicant reports that the elementary school now has an enrollment of 600, the high school has an enrollment of 120, and the post-high school program has an enrollment of 20; and

WHEREAS, the applicant also reports that total enrollment is expected to increase by approximately 90 students in the next several years; and

WHEREAS, the applicant contends that the Existing Building’s facilities are inadequate and do not meet the stated programmatic needs of the Yeshiva; and

WHEREAS, specifically, the applicant reports that the following spaces are over-crowded and are not meeting the needs of the Yeshiva: (1) the kitchen and dining room; (2) the classrooms and educational spaces; (3) the office and staff space; and (4) the recreational space; and

WHEREAS, the applicant also commented upon the need for dormitory space for the post-high school program students; and

WHEREAS, as to the kitchen and dining room, the

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applicant states that the kitchen's total square footage (760 sq. ft.) does not allow for sufficient food preparation space, and the dining room is so undersized that three lunchtime shifts are necessary; and

WHEREAS, the applicant also notes that lecture/breakfasts for the older students are compromised by the need to share the dining room with younger and more disruptive students; and

WHEREAS, finally, the applicant notes that the proposed expanded dining room (with a capacity of 260 additional people) and kitchen (at 3,540 sq. ft.) would alleviate these issues; and

WHEREAS, as to the classrooms and educational spaces, the applicant notes that with only 28 classrooms for the existing enrollment within the Existing Building, the Yeshiva has been forced to use the library, the women's prayer balcony and some storage rooms for classroom space, and has rented off-site space in a nearby synagogue; and

WHEREAS, the Yeshiva also located classes in a house on lot 17; and

WHEREAS, the applicant notes that the New Addition will alleviate this overcrowding through the provision of 15 new classrooms, as well as bathrooms, teacher lounge, a library and a computer center, and eliminate the need to rent off-site space; and

WHEREAS, the New Addition will also more properly separate the upper and lower schools; and

WHEREAS, as to office and staff space, the applicant states that the Existing Building has only 2,590 sq. ft. of space devoted to office/staff use, which at 100 sq. ft. per person, would accommodate about 26 persons; and

WHEREAS, however, the applicant notes that the number of staff has increased given the increase in enrollment, such that this amount of space is grossly inadequate; and

WHEREAS, the applicant states that the New Addition will add an office and faculty lounge on the first floor, and four offices and a teachers' lounge of the second floor; and

WHEREAS, the applicant states that these new spaces will alleviate the staff and office over-crowding that currently exists; and

WHEREAS, as to recreational space, the applicant notes that the total square footage of the interior recreational space is 3,100, and the total square footage of the exterior play space is 10,100, all of which is inadequate for the current enrollment of the Yeshiva; and

WHEREAS, the applicant notes that the New Addition includes a larger gymnasium (3,813 sq. ft.), a new roof deck of 4,275 sq. ft., and a playground of 2,958 sq. ft.; and

WHEREAS, again, the applicant contends that these new recreational spaces will address the current deficiencies; and

WHEREAS, finally, as to the dormitory facility, the applicant explains that the post-high school program students are engaged in an extremely rigorous educational experience, which necessitates that they reside as close to the base of study as possible; and

WHEREAS, the applicant also states that the dormitory facility will allow the Yeshiva to attract high caliber students

and remain competitive with other similar educational institutions; and

WHEREAS, further, the proposed 18 dormitory rooms will allow for an anticipated increase in enrollment in the post-high school program, which will result from matriculation from the high school and from outside recruitment; and

WHEREAS, the Board credits the applicant's statements as to the Yeshiva's programmatic needs, and understands that the proposed facilities could not be accommodated in an as of right envelope; and

WHEREAS, the Board also acknowledges that the Yeshiva, as a religious educational institution, is entitled to significant deference under the case law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, in addition to these programmatic needs, the applicant notes that the New Portion is the only developable parcel wider than 50 ft. in close proximity to the Yeshiva, making it a unique parcel of land in the neighborhood and unique in relation to the Yeshiva's needs; and

WHEREAS, based upon the above, the Board finds that the adjacency of the New Portion to the Old Portion, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva is a not-for-profit organization and the proposed development will be in furtherance of its educational mission; and

WHEREAS, the applicant represents that the New Addition will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the variances requested in this application are largely the same as those requested in the Prior Grant, and argues that the Board's prior determination should pertain to the New Addition; and

WHEREAS, however, the Board notes that the New Addition fronts on East 36th Street, which is a 60 ft. narrow street and has a different context than East 36th Street, which is an 80 ft. wide street; and

WHEREAS, accordingly, an independent evaluation of the impact of the New Addition is required; and

WHEREAS, the Board notes that the New Portion abuts existing residential dwellings on its south side and on its north side, as well as across the street to the east; and

WHEREAS, as to the dwellings on the south side, the Board observes that the rear yards of these dwellings abut the common lot line, and that there are garages in the rear yards; and

WHEREAS, further, an eight feet side yard is provided along this lot line; and

WHEREAS, thus, the Board determines that there will be no appreciable impact from the New Addition on these homes; and

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WHEREAS, likewise, on the north side, an eight feet side yard will be provided between the New Addition and the adjacent dwelling; and

WHEREAS, as to the frontage on East 36th Street, the Board observes that the applicant reduced the proposed initial setback height to 44 feet (from the initially proposed 46 feet), and has reduced the overall height to 54 feet (from the initially proposed 56 feet); and

WHEREAS, the applicant contends, and the Board agrees, that the heights cannot be further reduced because of the need to maintain reasonable floor to ceiling heights for the proposed dormitory spaces; and

WHEREAS, further, a ten ft. front yard is provided along approximately 64 ft. of the frontage, and an approximately 43 ft. deep play area extends along the remainder of the frontage; and

WHEREAS, in sum, the Board agrees that the requested waivers will not change the character of the neighborhood or impact adjacent uses; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the proximity of the New Portion to the Existing Building and the programmatic needs of Yeshiva; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford relief, since the Proposed Addition is designed to address the Yeshiva's present and anticipated programmatic needs; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA094K dated May 23, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a zoning lot within an R5 zoning district, a four-story addition to an existing Use Group 3 religious school, to accommodate additional educational space and accessory dormitory facilities, which violates zoning provisions related to floor area and Floor Area Ratio, lot coverage, front wall height, side yard, rear yard, front setback and sky exposure plane, side setback, and rear yard equivalent, contrary to ZR §§ 24-11, 24-521, 24-35, 24-36, 24-551 & 24-382; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 30, 2006"- (12) sheets; and *on further condition*:

THAT all bulk parameters, including yards, coverage, and setbacks, shall be as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2006.

313-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Douglas Brenner and Ian Kinniburgh, owners.

SUBJECT – Application October 20, 2005 – under Z.R. §72-21 to allow a proposed enlargement of an existing residential building located in C6-1 and R7-2 districts to violate applicable rear yard regulations; contrary to Section 23-47. PREMISES AFFECTED – 26 East 2nd Street, Block 458, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

Adopted by the Board of Standards and Appeals, October 31, 2006.

106-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Mendel Bobker,

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owner.

SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to allow the enlargement of a two-family residence which exceeds the allowable floor area ratio per ZR 23-141, side yards less than the minimum per ZR 23-461 and proposes a rear yard less than the minimum required per ZR 23-47. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1436 East 28th Street, west side of East 28th Street, 280 between Avenue N and Kings Highway, Block 7681, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 28, 2006, acting on Department of Buildings Application No. 302073379, reads in pertinent part:

“The proposed enlargement of the existing two-family residence in an R2 district:

1. Causes an increase in the floor area by exceeding the maximum allowable floor area, thereby being contrary to Section 23-141(a) of the Zoning Resolution.
2. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the required 30’-0”.
3. Proposed plans are contrary to ZR 23-461(a) in that the proposed side yards are less than the minimum required, of 5’-0” minimum each and a total minimum of 13’-0”.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for floor area, rear yard, and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 12, 2006, after due notice by publication in *The City Record*, with continued hearings on October 24, 2006, and then to decision on October 24, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application on the condition that there be a distance of five feet between the house and the garage; and

WHEREAS, certain neighbors provided testimony in opposition to the proposal, citing concerns about the neighborhood character for larger rear yards; and

WHEREAS, the subject lot is located on the west side of 28th Street, between Avenue N and Kings Highway; and

WHEREAS, the subject lot has a total lot area of 3,000 sq. ft., and is occupied by a 2,060 sq. ft. (0.69 FAR) two-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the proposed enlargement will be two stories with a cellar and will be located at the rear of the existing home; and

WHEREAS, the applicant seeks an increase in the floor area from 2,060 sq. ft. (0.69 FAR) to 2,552 sq. ft. (0.85 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to maintain the existing non-complying front yard of 14’-11” (15 feet is the minimum required), and the existing non-complying side yards of 3’-5” and 6’-0” (side yards of 13’-0” are required with a minimum width of 5’-0” for one); and

WHEREAS, the applicant proposes to provide a rear yard of 20’-0” (30’-0” is the minimum required); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, the wall height and total height, which comply with zoning district regulations, will not change; and

WHEREAS, at hearing, the Board expressed concern that there was not sufficient space between the rear of the enlarged home and the garage; and

WHEREAS, in response, the applicant revised the plans to provide for a minimum of three feet between the rear of the home and the existing garage; and

WHEREAS, the applicant states that a three ft. portion of the garage, closest to the rear of the home would be demolished in order to provide the additional space; and

WHEREAS, the Board notes that certain neighbors expressed concern about the effect any alteration to the existing garage might have on the adjoining garage on the adjacent property; and

WHEREAS, at hearing, the Board asked the applicant about how any potential impact on the garage was being addressed; and

WHEREAS, the applicant provided a statement, stamped and sealed by a professional engineer, stating that precautions would be taken during the partial demolition of the subject garage in order to protect the party wall of the adjoining garage and adjacent property; and

WHEREAS, as to neighborhood context, the applicant submitted a streetscape indicating the heights of five homes on the subject block, indicating that the neighboring homes and the subject home, as proposed, all have a total height of 25’-9”;

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has

MINUTES

granted through the subject special permit in the subject zoning district; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for floor area, rear yard, and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 26, 2006"-(6) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building and the yard dimensions: a total floor area of 2,552 sq. ft. (0.85 FAR), a wall height of 21'-9", a total height of 25'-9", a front yard of 14'-11", one side yard of 3'-5", one side yard of 6'-0", and a rear yard of 20'-0", all as illustrated on the BSA-approved plans;

THAT there shall be a minimum distance of three feet between the house and the garage;

THAT the garage shall be as approved by DOB;

THAT any porches shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2006.

298-05-BZ

APPLICANT – Rampulla Associates Architects, for Pasquale Pappalardo, owner.

SUBJECT – Application October 4, 2005 – Variance pursuant to Z.R. Section 72-21 to construct a new two-story office building (Use Group 6) with accessory parking for 39 cars. The premises is located in an R3X zoning district. The site is currently vacant and contains an abandoned greenhouse building from when the site was used as a garden center. The proposal is contrary to the district use regulations pursuant to Z.R. Section 22-00.

PREMISES AFFECTED – 1390 Richmond Avenue, bound by Richmond Avenue, Lamberts Lane and Globe Avenue, Block 1612, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla and James Heineman.

For Opposition: B.C. Richard A. Posavitz and D.C. William Tanzosh; Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for decision, hearing closed.

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.

SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking. Parking for 12 vehicles in the cellar is proposed. The existing one-story structure consisting of approximately 2,600 SF will be demolished.

PREMISES AFFECTED – 2041 Flatbush Avenue, at the intersection of Flatbush Avenue and the eastern side of Boughman Place. Block 7868, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for an adjournment.

50-06-BZ

APPLICANT – Jeffrey A. Chester, Esq., for 461 Carol Strait, LLC, owner.

SUBJECT – Application March 20, 2006 – Use Variance pursuant to Z.R. §72-21 to permit the conversion and

MINUTES

expansion of a commercial/industrial building to a two-family residence. The premise is located in a M1-2 zoning district. The waiver requested relates to the use regulations pursuant to Z.R. §42-00. The subject site was previously used by Linda Tool Co., a custom tool and dye manufacturer which occupied the premises for several decades.

PREMISES AFFECTED – 461 Carroll Street, between Nevins Street and Third Avenue, Block 447, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jeffrey Chester.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for continued hearing.

55-06-BZ

APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.

SUBJECT – Application March 24, 2006 – Zoning variance pursuant to ZR Section 72-21 to allow a proposed office building in an R3-2/C1-1 (NA-1) district to violate applicable rear yard regulations; contrary to ZR Sections 33-26 and 33-23. Special Permit is also proposed pursuant to ZR Section 73-44 to allow reduction in required accessory parking spaces.

PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot (Tentative 92, 93, 94), Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for continued hearing.

131-05-BZ

APPLICANT – Law Office of Vincent L. Petraro, for Delco Properties, LLC, owner.

SUBJECT – Application Variance application under Z.R. Section 72-21 to permit a five-story retail/banquet facility/office building of 112,137 square feet and up to 276 attended parking spaces on the two cellar levels. The site is located in a C4-3 zoning district. The proposal is contrary to Z.R. Sections 33-122, 33-432, 36-21, 36-62, and 32-21. The variance waivers requested relate to floor area, front wall height, number of parking spaces, number of loading berths, and the distance from a residence district. There are two existing commercial buildings on the site which will be demolished as part of the proposed action.

PREMISES AFFECTED – 72-01/72-11 Roosevelt Avenue, 37-61/69 72nd Street and 72-18 Broadway, corner of 72nd Street and Broadway, Block 1283, Lot 72, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Steven Simicich

ACTION OF THE BOARD – Laid over to January 9, 2006, at 1:30 P.M., for continued hearing.

67-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.

SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. 72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of ZR 22-00 and 36-21. The proposed number of parking spaces pursuant to a waiver of ZR 36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Joseph Morsellino, Marc Steinberg, Peter Martin, Sal Razano, John Pitera, Hiriam Rothkrug and Frank Trigglio.

For Opposition: Steven Matteo and Raymond M Farrell.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for continued hearing.

128-06-BZ

APPLICANT– Juan D. Reyes III, Esq., for Atlantic Walk, LLC, owner.

SUBJECT – Application June 16, Zoning variance pursuant to ZR § 72-21 to allow a nine-story residential building in an M1-5 district (Area B-2 of Special Tribeca Mixed Use District). Twenty Six (26) dwelling units and twenty six (26) parking spaces are proposed. The development would be contrary to use (Z.R. §111-104(d) and 42-10), height and setback (Z.R. § 43-43), and floor area ratio regulations (Z.R. §111-104(d) and 43-12). The number of parking spaces exceeds the maximum allowed is contrary to Z.R. § 13-12.

PREMISES AFFECTED – 415 Washington Street, west side of Washington Street, corner formed by Vestry Street and Washington Street, Block 218, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Juan Reyes, John Strauss, George Leventis, Jos Lombardi and Robert Pauls.

For Opposition: Jack Lester, Carole DeSaram, Richard Herschley, Mark Stern and A ?

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for continued hearing.

159-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Shalom Kalnicki,

MINUTES

owner.

SUBJECT – Application July 18, 2006 - Pursuant to ZR 72-21 for a variance to construct a single family home on a vacant lot which does not comply with the minimum lot width ZR 23-32 and less than the total required side yard, ZR 23-461. The premise is located in an R1-1 zoning district.

PREMISES AFFECTED – 4540 Palisade Avenue, east side of Palisade Avenue, 573' from 246th Street, Block 5923, Lot 231, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for decision, hearing closed.

226-06-BZ

APPLICANT– Eric Palatnik, P.C., for Bracha Weinstock, owner.

SUBJECT – Application September 5, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family semi-detached residence. This application seeks to vary ZR 23-141(a) for open space and floor area; ZR 23-461(b) for less than the minimum side yard of 8 feet; ZR 23-47 for less than the minimum rear yard and ZR 23-631 for perimeter wall height.

The premise is located in an R3-2(HS) zoning district. PREMISES AFFECTED – 1766 East 28th Street, between Avenue R and Quentin Road, Block 6810, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for decision, hearing closed.

234-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Martin Gross and Batsheva Gross, owners.

SUBJECT – Application September 11, 2006 – Pursuant to ZR 73-622 for the enlargement of single family residence. This application seeks to vary ZR 23-141(a) for open space and floor area, ZR 23-47 for less than the minimum rear yard and ZR 23-461 for less than the minimum side yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1085 East 22nd Street, east side, between Avenue J and K, Block 7604, Lot 38, Borough of

Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 10 A.M., for continued hearing.

235-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Susan Rosenberg, owner.

SUBJECT – Application September 11, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family residence. This application seeks to vary ZR 23-141 for open space and floor area and ZR 23-47 for less than the minimum rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 3155 Bedford Avenue, east side of Bedford Avenue, between Avenue J and Avenue K, Block 7607, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 5:45 P.M.

BULLETIN

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Volume 91, Nos. 43-44

November 23, 2006

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

Commissioners

Jeffrey Mulligan, *Executive Director*

Roy Starrin, *Deputy Director*

John E. Reisinger, *Counsel*

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290-06-BZ

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291-06-BZ

68-60 Austin Street, Austin Street between Yellowstone Boulevard and 69th Road, Block 3234, Lot 29, Borough of **Queens, Community Board: 6.** (SPECIAL PERMIT) 73-00-Reduction in parking.

292-06-A

128 Newton Street, Located mid-block on the south side of Newton Street between Graham Avenue and Manhattan Avenue, Block 2719, Lot 14, Borough of **Brooklyn, Community Board: 1.** Appeal-Common law application establishing a vested right to continue with the development of an 8-story residential building.

293-06-BZ

54*07 254th Street, East side of 254th Street, 189 feet north of Horace Harding Expressway, Block 8256, Lot 11, Borough of **Queens, Community Board: 11.** Under 72-21-Proposed enlargement of existing one-family dwelling exceeds the permitted floor area and does not provide the required open space.

294-06-BZ

31-11 Broadway, Between 31st and 32nd Street., Block 613, Lot 1 & 4, Borough of **Queens, Community Board: 1.** (SPECIAL PERMIT) 73-36-To allow a Physical Cultural Establishment.

295-06-A

22 Graham Place, South side of Graham Place 163.99' east of mapped Beach 203rd Street., Block 16350, Lot 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed reconstruction and enlargement of single family dwelling.

296-06-A

37 Beach 222nd Street, East side of Beach 222nd Street 220.92' north of mapped Breezy Point Boulevard., Block 16350, Lot 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed reconstruction and enlargement of single family dwelling.

297-06-BZ

130 Montgomery Avenue, The cross streets are Victory Boulevard and Fort Place., Block 17, Lot 116, Borough of **Staten Island, Community Board: 1.** Variance-23-47 & 23-145.

298-06-A

130 Montgomery Avenue, The cross streets are Victory Boulevard and Fort Place., Block 17, Lot 116, Borough of **Staten Island, Community Board: 1.** Appeal-Proposed construction of a mixed use (commercial and residential) condominium building in the bed of a map street is contrary to general City Law 35.

299-06-BZ

1976 Crotona Parkway, East side of Crotona Parkway, 100' north of East Tremont Avenue, Block 3121, Lot 10 & 25, Borough of **Bronx, Community Board: 6.** Under 72-21-To legalize the operation of a parking garage and parking lot.

300-06-A

43-17 104th Street, North side, north of the corner formed by the intersection of 44th Street and 104 Avenue., Block 1987, Lot 67, Borough of **Queens, Community Board: 4.** Appeal - Proposed building in the bed of a mapped street is contrary to General City Law 35.

301-06-BZ

148 Fountain Avenue, West side of Fountain Avenue, 111 feet north of intersection with Glenmore Avenue., Block 4190, Lot 40, Borough of **Brooklyn, Community Board: 5.** Under 72-21-To permit construction of a two family dwelling without the required side yard.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

DECEMBER 12, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 12, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

615-57-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application October 10, 2006 – Extension of term for ten years, waiver of the rules for a gasoline service station (Exxon) which expired on June 5, 2003 and an extension of time to obtain a certificate of occupancy in an R-4 zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, between Kissena Boulevard and 145th Place, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

304-82-BZ

APPLICANT – Bryan Cave, LLP, for Dansar, LLC, owner.

SUBJECT – Application October 6, 2006 – Re-open and amend an existing variance (§72-21) granted in 1984 for the conversion of floors two through nine in a commercial building to residential use with an existing commercial (UG6) on the first and cellar floors in an M1-5M zoning district.

PREMISES AFFECTED – 36 East 22nd Street, south side of East 22nd Street, 205' west of the corner of Park Avenue, south and East 22nd, Block 850, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

16-95-BZ

APPLICANT – Stadtmauer Bailkin, LP, for STA Parking Group, owner.

SUBJECT – Application September 29, 2006 – Extension of Time to complete construction, which expired on October 23, 2003, on a previously granted variance for a UG8 parking garage with accessory auto repairs and an amendment to permit the legalization of the ramps within the existing parking garage and the relocation of the accessory office from the first floor to the second floor in an R8B zoning district.

PREMISES AFFECTED – 434 East 77th Street, aka 433 East 76th Street, located between East 76th and 77th Street, between York and First Avenue, Block 1471, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #8M

395-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah Contract Vendee, owner; Meyer Unsorfer, lessee.

SUBJECT – Application June 16, 2006 – Request for a re-opening and amendment to a previously-granted variance (§ 72-21) that allowed bulk waivers for a new house of worship in an R5 district. The proposed amendment includes the following: (1) increase in floor area and FAR, (2) increase in perimeter wall height; and (3) minor reduction in front yard provided.

PREMISES AFFECTED – 1232 54th Street, southwest side 242'-6" southeast of the intersection formed by 54th and 12th Avenue, Block 5676, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

48-05-BZ

APPLICANT – Wachtel & Masyr, LLP, for Bethune West Associates, LLC, owner.

SUBJECT – Application October 30, 2006 – Request for a re-opening and amendment of a previously granted zoning variance that allowed a fifteen- (15) and three- (3) story residential building with ground floor retail use (UG 6), sixty-four (64) dwelling units and sixty (60) accessory parking spaces in C1-7A and C1-6A zoning districts. The proposed amendment includes the following: (1) ground floor level to change from retail to residential use; (2) dwelling units to increase from 64 to 84; (3) minor increase in lot coverage; and (4) modifications to the building's height and setback.

PREMISES AFFECTED – 469 West Street, aka 70 Bethune Street, West Street between Bethune Street and West 12th Street, Block 640, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

139-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Ann Fitzsimmons, lessee.

SUBJECT – Application July 6, 2006 – Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of mapped street (Oceanside Avenue) and the proposed upgrade of an existing private disposal system is contrary to the Section 35 of the General City Law and the Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 1 Irving Walk, east side of Irving Walk at intersection of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

169-06-A

APPLICANT – Timothy Costello, for Breezy Point

CALENDAR

Cooperative, Inc., owner; Raymond Wasson, lessee.
SUBJECT – Application August 10, 2006 – Proposed reconstruction and enlargement of an existing one family dwelling located partially within the bed of mapped street (Oceanside Avenue) contrary to Section 35 of the General City Law. R4 Zoning District.
PREMISES AFFECTED – 175 Oceanside Avenue, Block 16350, Lot 400, Borough of Brooklyn.
COMMUNITY BOARD #14Q

DECEMBER 12, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 12, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

151-04-BZ

APPLICANT– Philips Nizer, LLP, for Fred M. Schildwachter & Son, Inc., c/o Dan Schildwachter, owner; Adriana A. Salamone, lessee.
SUBJECT – Application April 9, 2004 – Special Permit (§73-36) to permit the legalization of an existing physical culture establishment (Star Fitness) in an M3-1 Zoning District.
PREMISES AFFECTED – 1385 Commerce Avenue, southwest corner of Butler Place, Block 1385, Lot 13, Borough of The Bronx.
COMMUNITY BOARD #10BX

378-04-BZ

APPLICANT– Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.
SUBJECT – Application November 29, 2004 – Variance (Section 72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to Section 42-00.
PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #1BK

56-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, Esq., for Suri Blatt and Steven Blatt, owners.
SUBJECT – Application March 27, 2006 – Pursuant to ZR 73-622 Special Permit for the enlargement of an existing one family residence which exceeds the maximum allowed floor area and decreases the minimum allowed open space as per

ZR 23-141 and has less than the minimum required rear yard as per ZR 23-47.

PREMISES AFFECTED – 1060 East 24th Street, East 24th Street between Avenue J and Avenue K, Block 7605, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

111-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application June 5, 2005 – Special Permit (73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (23-141); side yard (23-48) and perimeter wall height (23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #15BK

115-06-BZ

APPLICANT– Harold Weinberg, for Saul Mazor, owner.

SUBJECT – Application June 7, 2006 – Special Permit (73-622) for the enlargement of a single family detached residence. This application seeks to vary open space, floor area and lot coverage (23-141); side yard (23-461) and rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1820 East 28th Street, west side 140' south of Avenue R, between Avenue R and S, Block 6833, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

124-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Nasanel Gold, owner.

SUBJECT – Application June 13, 2004 - Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141); side yard (23-48) and rear yard (34-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1078 East 26th Street, East 26th Street between Avenue J and Avenue K, Block 7607, Lot 83, Borough of Brooklyn.

COMMUNITY BOARD #14BK

138-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for RH Realty LLC NY by Ralph Herzka, owner.

SUBJECT – Application July 5, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141(a)) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3447 Bedford Avenue, between Avenue M and N, Block 7661, Lot 31, Borough of

CALENDAR

Brooklyn.

COMMUNITY BOARD #14BK

214-06-BZ

APPLICANT– Walter T. Gorman, P.E., for Sidney Esikoff & Norman Fieber, owners.

SUBJECT – Application August 24, 2006 – Special Permit (§11-411) for the re-establishment and extension of term for an existing gasoline service station, which has been in continuous operation since 1953. R3-2 zoning district.

PREMISES AFFECTED – 196-25 Hillside Avenue, northwest corner of 197th Street, Block 10509, Lot 265, Borough of Queens.

COMMUNITY BOARD #8Q

216-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application August 28, 2006 – Special Permit (§11-411 & §11-412) for the re-establishment and extension of term for an existing automotive service station , which has been in continuous operation since 1961 and legalization of certain minor amendments to previously approved plans. C1-4/R6-A zoning district.

PREMISES AFFECTED – 35-17 Junction Boulevard, east side of Junction Boulevard between 35th and 37th Avenues, Block 1737, Lot 49, Borough of Queens.

COMMUNITY BOARD #4Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 14, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, August 22, 2006 and August 23, 2006 as printed in the bulletin of September 1, 2006, Vol. 91, No. 34. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

866-49-BZ, Vol. III

APPLICANT – Carl. A. Sulfaro, Esq., for 2912 Realty, LLC, owner.

SUBJECT – Application June 12, 2006 – Pursuant to ZR §11-411 for an Extension of Term for ten years for a gasoline service station (Shell Station) which expired on October 7, 2006, a Waiver of the Rules of Practice and Procedure for filing subsequent to the expiration of term and an Amendment to legalize the change in signage, new storefront and replacement of the wrought iron fencing with white vinyl fencing. The premise is located in an R3-X zoning district. PREMISES AFFECTED – 200-01/07 47th Avenue, northeast corner of 47th Avenue and Francis Lewis Boulevard, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a waiver of the Rules of Practice and Procedure, a reopening, amendments to the approved plans, and an extension of term for a previously granted variance for a gasoline service station, which expired on October 7, 2005; and

WHEREAS, a public hearing was held on this application on September 12, 2006 after due notice by publication in *The City Record*, with a continued hearing on October 17, 2006, and then to decision on November 14, 2006; and

WHEREAS, Community Board, 11, Queens, recommends approval of the application on condition that the dumpster on the west side of the building be moved closer to the building, that a fence be provided around the open area at the rear of the building, that the certificate of occupancy be updated, and that the sale of beer, wine, or cigarettes not be permitted at the site; and

WHEREAS, the site is located on the northeast corner of 47th Avenue and Francis Lewis Boulevard; and

WHEREAS, the site is located within an R3X (formerly R3-2) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the site since March 21, 1950 when, under the subject calendar number, the Board granted a variance for the maintenance of a gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on April 23, 1996, the grant was amended to permit several site modifications, and extended for a term of ten years from the expiration of the prior grant, to expire on October 7, 2005; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, additionally, the applicant proposes to legalize the conversion of the accessory office to a convenience store, a change in the fencing material along the northern lot line from wrought iron fencing to white vinyl, and a change to the signage; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

WHEREAS, at hearing, the Board noted that there appeared to be parking in front of the curb cut on 47th Avenue and asked the applicant to re-examine the parking layout; and

WHEREAS, the applicant subsequently submitted revised plans indicating the parking spaces along the southeastern corner of the lot, nearest to 47th Avenue, would be removed; and

WHEREAS, at the Community Board's suggestion, the applicant relocated the dumpster to the 47th Avenue side of the site, the maximum distance away from residential uses, and installed security flood lights at the front, side, and rear of the building; and

WHEREAS, in response to the Community Board's concern about the sale of cigarettes, beer, or wine at the convenience store, the applicant stated that cigarettes, beer, and wine are not currently sold in the small convenience store; and

WHEREAS, however, the Board notes that it is not within its authority to regulate what is sold at the convenience store and does not believe it is appropriate to impose such restrictions; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 21, 1950, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from October 7, 2005 to expire on October 7, 2015; to

MINUTES

legalize the conversion of a portion of the building to an accessory convenience, a change in the fencing material, and a change in the signage; and to permit certain proposed site modifications *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received June 12, 2006'-(3) sheets and 'October 2, 2006'-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on October 7, 2015;

THAT all fencing shall be maintained in good condition;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one year of this grant;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

(DOB Application No. 402099741)

Adopted by the Board of Standards and Appeals, November 14, 2006.

131-93-BZ

APPLICANT – Eric Palatnik, P.C., for Al & Selwyn, Inc., owner.

SUBJECT – Application April 10, 2006 – Extension of Term/Amendment – pursuant to Z.R. §§11-411 and 11-412 to extend the term of an automotive service station which expired on November 22, 2004. The application seeks an amendment of the previous BSA resolution so as to authorize the enlargement of the existing one story masonry building to include two additional service bays and to expand the auto sales use to accommodate the display of twenty motor vehicles an increase from the previously approved five motor vehicles. The subject premises is located in a C2-2/R5 zoning district.

PREMISES AFFECTED – 3743-3761 Nostrand Avenue, north of the intersection of Avenue "Y", Block 7422, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a reopening,

amendments to the approved plans, and an extension of term for a previously granted variance for a gasoline service station, which expired on November 22, 2004; and

WHEREAS, a public hearing was held on this application on September 19, 2006 after due notice by publication in *The City Record*, with a continued hearing on October 24, 2006, and then to decision on November 14, 2006; and

WHEREAS, Community Board, 15, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the east side of Nostrand Avenue, north of Avenue Y; and

WHEREAS, the site is located within a C2-2 (R5) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the site since March 10, 1959, when, under BSA Cal. No. 501-58-BZ, the Board granted a variance for the maintenance and construction of a gasoline service station; and

WHEREAS, subsequently, the grant was amended and extended; the most recent term expired on November 6, 1984; and

WHEREAS, on November 22, 1994, the Board made an authorization, pursuant to ZR §§ 11-411, 11-412, and 11-413, to permit the re-establishment of the grant; this grant expired on November 22, 2004; and

WHEREAS, the 1994 grant also permitted modifications to the site and a change in use of a portion of the site to accessory auto sales; and

WHEREAS, the applicant now requests an additional ten-year term and an amendment to permit the enlargement of the existing building to include two additional service bays, the expansion of the auto sales use to accommodate the display of 14 vehicles, and to document the location of the existing underground gas tanks; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance, including the enlargement of an existing pre-1961 building provided that the floor area of the enlargement does not exceed 50 percent of the floor area of the existing building; and

WHEREAS, the applicant represents that the existing structure has a floor area of 1,701 sq. ft. and that it will be enlarged by 850 sq. ft. for a total floor area of 2,551 sq. ft.; and

WHEREAS, the Board notes that the proposed enlargement complies with the provisions of ZR § 11-412; and

WHEREAS, the applicant represents that the auto sale use has existed continuously as an accessory use and that the current proposal is a request to expand the accessory use; and

WHEREAS, the applicant initially proposed to provide spaces for 20 vehicles within the portion of the site dedicated to auto sales; and

WHEREAS, however, at hearing, the Board expressed concerns about the following: (1) the layout and number of vehicles in the sales area; and (2) the material used for the fencing; and

MINUTES

WHEREAS, specifically, the Board was concerned that the site could not accommodate 20 vehicles within the designated area and directed the applicant to re-design the layout and reduce the number of vehicles; and

WHEREAS, the Board also directed the applicant to remove the outdoor vehicle lift so that all repairs would be performed in an enclosed area; and

WHEREAS, in response, the applicant revised the proposal to provide for the reduction in the number of vehicles for sale to 14; and

WHEREAS, the applicant's revisions included the removal of the outdoor vehicle lift; and

WHEREAS, at hearing, the Board also asked the applicant about what kind of partition was proposed to be used to separate the auto sales area from the remainder of the lot; and

WHEREAS, the applicant responded that both six-ft. high fencing and roll-down gates would be installed around the perimeter of the auto sales area; and

WHEREAS, the Board directed the applicant to consider a sliding gate in place of a roll-down gate; and

WHEREAS, the applicant revised the plans to reflect a six-ft. sliding gate to provide access to the auto sales area; and

WHEREAS, finally, the Board notes that the location of the underground tanks has been noted on the plans; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on November 22, 1994, so that as amended this portion of the resolution shall read: "to extend the term for ten years from November 22, 2004 to expire on November 22, 2014, and to permit the enlargement of the existing building and the expansion of the auto sales use and designated sales area *on condition* that the use shall substantially conform to drawings as filed with this application, marked "Received October 30, 2006"--(1) sheet and "October 10, 2006" -- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 22, 2014;

THAT the accessory auto sales at the site shall be limited to 14 cars;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the placement and size of all signs shall be as indicated on the BSA-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not

related to the relief granted."
(NB 1376/58)

Adopted by the Board of Standards and Appeals,
November 14, 2006.

181-38-BZ

APPLICANT – Michael Cosentino, for Michael Innella, owner.

SUBJECT – Application June 28, 2006 – Pursuant to ZR §11-411 for an extension of term to a gasoline service station (Sunoco) for a ten year term which expired on June 3, 2005, and Amendment to convert the existing service repair bays to a convenience store and a waiver to file the application more than 30 days after the expiration of term. The premise is located in an R-3A(CD) zoning district.

PREMISES AFFECTED – 410-412 City Island Avenue, corner of Ditmars Street, Block 5645, Lot 6, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Fitzroy Thomas.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for decision, hearing closed.

717-60-BZ

APPLICANT – Eric Palatnik, P.C., for Sun Refining & Marketing, owner.

SUBJECT – Application September 25, 2006 – Extension of term/waiver of the rules for a Variance (§72-21) for an existing (UG 16) gasoline service station (Sunoco) in an R3-2/C1-1 zoning district which expired on June 1, 2006.

PREMISES AFFECTED – 2052 Victory Boulevard, southeast corner of Bradley Avenue, Block 724, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for continued hearing.

441-65-BZ

APPLICANT – Sheldon Lobel, P.C. for Eleanor Barrett c/o JP Morgan Chase, owner; Hess Amerada Corporation, lessee.

SUBJECT – Application March 20, 2006 – Pursuant to ZR §73-11 and §73-211 an Amendment to a previously granted special permit for the redevelopment of a gasoline service station, to construct an accessory convenience store (Hess

MINUTES

Express), to construct a new canopy and six pump islands with MPD dispensers and one diesel fuel dispenser. The premise is located in C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2488 Hylan Boulevard, located on the east side of Hylan Boulevard between Jacques Avenue and New Dorp Lane, Block 3900, Lot 12, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Josh Rinesmith, Marc Pilotta and Erwin Andres.

For Administration: Nitin Patel, DDC (DOT).

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for decision, hearing closed.

938-82-BZ

APPLICANT – Eric Palatnik, P.C., for A. Brothers Realty, Inc., owner; Eugene Khavenson, lessee.

SUBJECT – Application August 4, 2006 – to re-open the previous BSA resolution granted on May 17, 1983 to extend the term of the variance for twenty (20) years. The application also seeks a waiver of the BSA Rules of Practice and Procedure as the subject renewal request is beyond the permitted filing period. Prior grant allowed a one-story commercial office building (UG 6) in an R4 district; contrary to ZR §22-10.

PREMISES AFFECTED – 2470 East 16th Street, northwest corner of Avenue Y, block 7417, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for deferred decision.

574-85-BZ

APPLICANT – Law Office of Fredrick A. Becker for 125 East 39th Street Realty LLC, owner.

SUBJECT – Application September 21, 2006 – Extension of term for a previously granted Variance (72-21) to permit, in a C1-5(R-10) zoning district, an eating and drinking establishment (UG6) located in the cellar, basement and first floor of a five story building.

PREMISES AFFECTED – 125 East 39th Street, Northerly side of East 39th Street, 78' east of Lexington Avenue. Block 895, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 10 A.M., for continued hearing.

466-89-BZ

APPLICANT – Eric Palatnik, P.C., for Frank R. Bell Funeral Home Inc., owner.

SUBJECT – Application September 7, 2006 – Amendment to a previously granted Variance (§72-21) for the enlargement of an existing funeral home (UG7) to allow the increase of 1,250 square feet to the existing structure in an R6 zoning district.

PREMISES AFFECTED – 526, 528 and 536 Sterling Place, a/k/a 764 Classon Avenue, southwest corner of Sterling Place and Classon Avenue, Block 1174, Lots 32, 33, 35, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for decision, hearing closed.

70-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tenth City, LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 11, 2006 – Extension of Term of a Special Permit (73-36) to allow a Physical Culture Establishment (New York Sports Club) in a C6-6 and C1-4.5(MID) zoning district which expired on November 1, 2006 and an amendment to legalize the increase of 1,500 square feet on the second floor.

PREMISES AFFECTED – 576 Lexington Avenue, northeast corner of Lexington Avenue and East 51st Street, Block 1306, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for decision, hearing closed.

330-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Katz, owner; Anthony Gaudio, lessee.

SUBJECT – Application May 25, 2006 – requesting an extension of term/waiver and an amendment of a Physical Cultural Establishment located within a C1-6A zoning district in the Special Transit Land Use District, commencing on

MINUTES

February 16, 1995 and expiring on February 16, 2005. The amendment sought includes a change in operating control and proposed minor physical alterations to the establishment.
PREMISES AFFECTED – 242 East 14th Street, south side of 14th Street, Block 469, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ron Mandell.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for decision, hearing closed.

23-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yossi Kraus, owner.

SUBJECT – Application July 19, 2006 – Pursuant to ZR §73-11 and §73-622 this application is for an amendment to a previously granted Special Permit for the enlargement of a single family home for the proposed increase in floor area from .62 to 1.002 (+1,141.6 sq. ft.). The proposed plans are contrary to ZR §23-141(a) -floor area, open space; §23-48 minimum side yard and 23-47-minimum rear yard. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1150 East 23rd Street, west side, Block 7622, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

331-05-A

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Rock Development Corp., owner.

SUBJECT – Application November 17, 2005 – to permit the construction of the one family dwelling within the bed of mapped street, 153rd Place, contrary to General City Law Section 35. Premises is located in an R3-1 Zoning District.

PREMISES AFFECTED – 15-59 Clintonville Street a/k/a 15-45 153rd Place, east side of Clintonville Street, bed of mapped 153rd Place, Block 4722, Lot (tentative 19), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palantik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for decision, hearing closed.

63-06-A

APPLICANT – Sheldon Lobel, P.C.,

OWNERS: Kevin and Alix O’Mara

SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for deferred decision.

81-06-A

APPLICANT – Whitney Schmidt, Esq.

OWNERS: Kevin and Alix O’Mara

SUBJECT – Application May 2, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for deferred decision.

85-06-BZY

APPLICANT – Sanford Solny, for Menachem Realty, Inc., owner.

SUBJECT – Application May 5, 2006 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a mixed use building under the prior R6 zoning district. New zoning district is R4-1.

PREMISES AFFECTED – 1623 Avenue “P”, northwest corner of Avenue “P” and East 17th Street, Block 6763, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Sanford Sulny.

For Opposition: Sidney Stern.

For Administration: Narisa Sasitorn, Department of

MINUTES

Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December
12, 2006, at 10 A.M., for decision, hearing closed.

154-06-A

APPLICANT – Cozen O'Connor Attorneys, Flan Realty,
LLC, owner.

SUBJECT – Application July 12, 2006 - An appeal seeking a
determination that the owner of said premises has acquired a
common law vested right to continue development
commenced under the prior R6 zoning district. Premises is
located in a R6B zoning district.

PREMISES AFFECTED – 357 15th Street, north side of 15th
Street, between 7th and 8th Avenues, Block 1102, Lot 70,
Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December
5, 2006, at 10 A.M., for adjourned hearing.

155-06-A

APPLICANT – Cozen O'Connor Attorneys, Flan Realty,
LLC, owner.

SUBJECT – Application July 12, 2006 – An appeal seeking a
determination that the owner of said premises has acquired a
common law vested right to continue development
commenced under the prior R6 zoning district. Premises is
located in a R6B zoning district.

PREMISES AFFECTED – 359 15th Street, north side of 15th
Street, between 7th and 8th Avenues, Block 1102, Lot 70,
Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December
5, 2006, at 10 A.M., for adjourned hearing.

182-06-A thru 211-06-A

APPLICANT – Stadtmauer Bailkin, LLP, for Beachfront
Community, LLC, owner.

SUBJECT – Application August 22, 2006 – An appeals
seeking a determination that the owner of said premises has
acquired a common law vested right to continue development
commenced under the prior R5 Zoning district. Premises is
located in an R4-A Zoning district.

PREMISES AFFECTED – Beach 5th Street, Beach 6th Street
and Seagirt Avenue, bound of Seagrit Avenue to the north,
Beach 5th Street to the east, Beach 6th Street to the west
Reynolds Channel to the south, Block 15609, Lots 1, 3, 6, 8,
10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67 and 68; Block
15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67

and 69 Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Mitchell Korbey, Steve Sinacori, Richard
Bowers.

For Opposition: Fran Tuccio and Tracy A. Conray.

ACTION OF THE BOARD – Laid over to December
12, 2006, at 1:30 P.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING

TUESDAY AFTERNOON, NOVEMBER 14, 2006

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

47-05-BZ

CEQR #05-BSA-102Q

APPLICANT – Cozin O'Connor, LLP, for AMF Machine,
owner.

SUBJECT – Application March 1, 2005 – under Z.R. §72-21
to permit the proposed eight story and penthouse mixed-use
building, located in an R6B zoning district, with a C2-3
overlay, which exceeds the permitted floor area, wall and
building height requirements, is contrary to Z.R. §23-145
and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast
corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated February 17, 2005, acting on Department
of Buildings Application No. 402037924, reads, in pertinent
part:

“Proposed floor area, wall and building heights are
contrary to ZR 23-145, 23-633.”; and

WHEREAS, this is an application under ZR § 72-21, to
permit, on a site within an R6B(C2-3) zoning district, a
proposed five and six-story mixed-use residential/retail building,

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which does not comply with applicable zoning requirements concerning floor area and wall and building height, contrary to ZR §§ 23-145 and 23-633; and

WHEREAS, specifically, the building will have ground floor retail in the five-story portion, 138 residential units on the ground and upper floors of both portions, and a maximum of 160 accessory attended parking spaces in the cellar and partial sub-cellar (the "Proposed Building"); and

WHEREAS, the Proposed Building will be constructed pursuant to the Quality Housing regulations set forth at Chapter 8, Article II of the ZR; and

WHEREAS, the proposed residential floor area is 152,890.90 sq. ft. (124,082.50 sq. ft. is the maximum permitted), the proposed commercial floor area is 11,245.60 sq. ft. (46,154.40 sq. ft. is the maximum permitted), and the total proposed floor area is 164,136.50 sq. ft. (124,082.50 sq. ft. is the maximum permitted); and

WHEREAS, the proposed residential Floor Area Ratio (FAR) is 2.46 (2.0 is the maximum permitted), the proposed commercial FAR within the commercial overlay, is 0.19 (2.0 is the maximum permitted within the commercial overlay) and the total FAR is 2.65 (2.0 is the maximum permitted); and

WHEREAS, the proposed street wall height ranges from 42'-6" to 62'-6" at different locations (40'-0" is the maximum permitted) and the total building height ranges from 52'-6" to 62'-6" at different locations (50'-0" is the maximum permitted); and

WHEREAS, the applicant initially proposed to construct a five and nine-story building, with an FAR of 3.25, a street wall height of 42'-6", a total building height of 92'-6", and 174 dwelling units; and

WHEREAS, the Board expressed concern about this proposal, noting that there did not appear to be any justification for such significant height and FAR waivers, and also that the height and bulk would not be compatible with the character of the community, given the heights of the surrounding buildings; and

WHEREAS, subsequently, the applicant submitted an intermediate proposal, with the following bulk parameters: seven stories, an FAR of 2.9, a maximum total height of 72'-0", and 155 dwelling units; and

WHEREAS, the Board reviewed this intermediate proposal, and again expressed concerns about its height and FAR reflecting the minimum variance, and about its compatibility with the context of the neighborhood; and

WHEREAS, the applicant responded to the Board's concerns by submitting the current version, as described above, which the Board finds acceptable in terms of impact and minimum variance; and

WHEREAS, in addition to the above-cited waivers, the Board also expressed concern at hearing that a rear yard waiver might be needed, based on consideration of the northerly lot line, which abuts 91st Place; and

WHEREAS, in a submission dated August 1, 2006, the applicant responds that the northerly lot line is actually a side lot line since its angles are 68 degrees and 112 degrees, and not

within 45 degrees parallel to the street line, as required for a rear lot line; and

WHEREAS, accordingly, the applicant states that no yard relief is needed, and that DOB will require full compliance with all applicable yard requirements; and

WHEREAS, a public hearing was held on this application on October 18, 2005 after due notice by publication in the *City Record*, with continued hearings on December 13, 2005, January 31, 2006, March 7, 2006, April 4, 2006, and May 2, 2006; and

WHEREAS, on August 22, 2006, the decision was deferred to November 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, former Vice-Chair Babbar, and current Vice-Chair Collins; and

WHEREAS, Community Board 4, Queens, recommended disapproval of the original version of this application, claiming that it would not be compatible with the character of the community in terms of overall height, that not enough parking would be provided, and that development of the site might affect remains related to an African-American cemetery that formerly occupied a portion of the site; and

WHEREAS, certain neighbors to the premises also appeared in opposition to this application (particularly when the proposal was a nine-story building), alleging that such a tall building would not be compatible with the character of the community; and

WHEREAS, the subject premises has a total lot area of 62,041.23 sq. ft., and is situated on Corona Avenue at the northeast corner of Corona and 90th Street, with approximately 265 ft. of frontage on Corona and 104 ft. of frontage on 90th; the site is also adjacent to a Long Island Railroad right of way; and

WHEREAS, as noted above, the premises appears to be the site of a former cemetery; accordingly, during the hearing process, the applicant worked with the City's Landmarks Preservation Commission (LPC) to develop a mechanism by which concerns about the discovery of human remains could be resolved (discussed in more detail below); and

WHEREAS, the site has an irregular flag shape, with approximately 14 lot lines with varying angles; and

WHEREAS, this results in only approximately 23,000 sq. ft. of the site with direct street access; the remainder of the site (approximately 40,000 sq. ft.) is located behind existing homes that front on 90th Street; and

WHEREAS, 23,077 sq. ft. of the total lot area is within the C2-3 commercial overlay, the remainder (38,964 sq. ft.) is solely within the R6B zoning district; and

WHEREAS, the site is improved upon with various one to three-story warehouse/light manufacturing buildings, with an aggregate floor area of 56,632 sq. ft. (0.91 FAR); and

WHEREAS, these warehouse and manufacturing buildings, which are lawful non-conforming uses, are proposed to be demolished and replaced with the Proposed Building; and

WHEREAS, because the Proposed Building is non-compliant as to FAR and wall and total height, the instant

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variance application was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which, when considered in combination, create an unnecessary hardship in developing the site in compliance with the applicable regulations: (1) the site's irregular shape; (2) the site's proximity to the LIRR tracks; (3) the site's slope; and (4) the presence of the non-conforming, obsolete warehouse/manufacturing structures; and

WHEREAS, as to the site's shape, the applicant states that it has 14 lot lines and 16 different angles, some acute, some obtuse and some 90 degrees; and

WHEREAS, the applicant states that this unusual lot configuration leads to difficulties during development; specifically, the applicant states that due to the lot's depth and shape, non-conventional staged construction methods must be used, in order to address the narrowing of the property from the portion abutting the street towards the interior portion; and

WHEREAS, the applicant states that excavation in the front of the property cannot occur until the superstructure in the rear has been completed, which leads to a lengthier, more costly construction process; and

WHEREAS, the applicant also represents that the unusual shape of the site results in inordinately deep residential corridors, with a long travel distance between the elevator and certain of the units, which depresses the sales value of such units; and

WHEREAS, as to the location of the site adjacent to the railroad cut, the applicant states that the lower residential units would front on this cut, decreasing their sales value; and

WHEREAS, as to the existing buildings, the applicant states that they cannot be readily converted to residential use; and

WHEREAS, however, since the buildings will be demolished, this basis of uniqueness is irrelevant to the Board's consideration; and

WHEREAS, the Board recognizes that the shape of the lot is unusual, but at the first hearing, asked the applicant if there was an ability to compensate for this shape and the problems that it might pose by developing the site with a wider and shorter building; and

WHEREAS, the applicant responded that a deeper building would result in a layout with disproportionately deep living and bedrooms, which would have inferior light and air, and thus be less marketable; and

WHEREAS, the Board also asked the applicant to explain the nexus between the site's irregularity and the specific waivers being requested; and

WHEREAS, the applicant responded that the shape of the site and its proximity to the railroad cut lead to both increased construction costs and diminished revenue for the proposed units, the financial effect of which would be overcome by the requested floor area and height waivers; and

WHEREAS, specifically, the applicant states that the increased construction costs relate to the site's limited frontage and the narrowing of the site at one portion to what the applicant terms a "bottleneck", which necessitates a phased (and more

expensive) construction process; and

WHEREAS, further, the applicant states that the proximity of the railroad cut diminishes the sales value of certain of the proposed units by up to twenty percent; and

WHEREAS, finally, the applicant notes that the slope affecting the site will lead to increased construction costs; and

WHEREAS, the Board has reviewed the applicant's subsequent submissions made in support of these responses, and finds that they are credible and sufficient; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions – namely, the site's shape and its proximity to the railroad cut – when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing: (1) a scenario where the existing non-conforming buildings would be renovated and converted to a combination of retail, office, and storage use; and (2) a conforming and complying five-story residential structure, with a retail component in the commercial overlay district; and

WHEREAS, the applicant concluded that neither scenario would realize a reasonable return; and

WHEREAS, the Board reviewed this initial study, and asked for the following refinements: (1) an upwards revision of the sell-out value of the units, since they appeared to be low; (2) revised construction cost estimates; (3) further discussion of the impact of the adjacency to the railroad cut; and

WHEREAS, in response, the applicant submitted a revised study that increased both construction costs and sell-out value, and which explained the diminution in value from the adjacency of the railroad cut, as well as the increased construction costs arising from the slope condition; and

WHEREAS, based upon its review of the subsequent submissions of the applicant, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as an initial matter, the Board notes that neither the nine-story nor the seven-story iterations would have been contextual with the surrounding neighborhood, which is characterized by two story buildings adjacent to the site, three to four-story multiple dwellings in the immediate area, and some six-story buildings in the wider vicinity; and

WHEREAS, the Board notes that the proposal has been significantly reduced in terms of FAR and height, which makes it much more compatible with the surrounding context; and

WHEREAS, additionally, the applicant notes that the six-story portion of the Proposed Building will be located in

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the interior of the lot, behind existing buildings and the lower portions of Proposed Building, thus minimizing the impact of this portion on the adjacent buildings and street; and

WHEREAS, the Board also notes that the portion of the building most visible along Corona and 90th Street generally complies with the permitted envelope of 40 to 50 ft. in street wall height, and that the slight increase over these parameters allows the proposed retail on the ground floor to meet industry standards as to floor to ceiling heights; and

WHEREAS, finally, the Board notes that the proposed uses are as of right; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed a nine-story, 3.25 FAR building with 174 units; and

WHEREAS, the Board expressed its dissatisfaction with this proposal at the first hearing, given that it reflected a degree of relief not consonant with the actual hardship on the site; and

WHEREAS, the applicant subsequently submitted the above-referenced seven-story iteration, about which the Board expressed similar concerns; and

WHEREAS, in addition to the actual proposals, the applicant also submitted the following lesser variance scenarios: (1) a 2.5 FAR scenario; and (2) a 2.0 FAR scenario; and

WHEREAS, the applicant concluded that neither scenario would realize a reasonable return; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA102Q, dated June 7, 2004; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: the June 2004 EAS and December 19, 2003 Phase I Environmental Assessment Report; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on November 6, 2006 and submitted for proof of recording on November 8, 2006, and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, LPC has reviewed archaeological sensitivity models and historic maps for the subject site that indicate that there is a potential for the recovery of remains from a Colonial and 18th Century cemetery on the project site; LPC recommended in its March 31, 2005 findings that an archaeological documentary study be conducted to clarify these initial findings; and

WHEREAS, accordingly, a LPC Restrictive Declaration (the "LPC RD") was executed to address these archaeological concerns on November 6, 2006 and submitted for proof of recording on November 8, 2006; and

WHEREAS, LPC has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the LPC RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6B(C2-3) zoning district, a proposed six-story mixed-use residential/retail building, which does not comply with applicable zoning requirements concerning floor area, wall and building height, contrary to ZR §§ 23-145 and 23-633, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 1, 2006"-(14) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: five and six-story sections, ground floor retail, 138 residential units on the ground and upper floors, residential floor area is 152,890.90 sq. ft.; a residential FAR of 2.46; commercial

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floor area of 11,245.60 sq. ft.; a commercial FAR of 0.19; total floor area of 164,136.50 sq. ft.; total FAR of 2.65; a perimeter wall height of between 42'-6" and 62'-6" at different locations (as indicated on the BSA-approved plans) and a total building height of between 52'-6" and 62'-6" at different locations (as indicated on the BSA-approved plans);;

THAT a minimum of 107 accessory parking spaces and a maximum of 165 accessory parking spaces be provided, with the layout to be approved by DOB;

THAT all Quality Housing regulations shall be complied with, as reviewed and approved by the Department of Buildings;

THAT all requirements as set forth in the DEP RD and LPC RD shall be fully complied with;

THAT prior to the issuance of any building permit that would result in ground disturbance, including any permit issued for the purposes of excavating test pits for environmental soil sampling, the owner shall submit to the Department of Buildings a letter from the New York City Landmarks Preservation Commission stating that it has reviewed and approved as sufficient a memorialized agreement between the owner and the Descendent Church (as defined in the LPC RD), setting forth the procedure for the handling and disposition of any human remains that may be discovered at the Site during construction of the Proposed Development;

THAT should any irreconcilable conflict arise between the owner and the Descendent Church as to the handling and disposition of potential human remains, the owner agrees that such dispute may and shall be resolved through referral of the dispute to the Executive Director of the Board of Standards and Appeals, for resolution through whatever process s/he deems sufficient;

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
November 14, 2006.

288-05-BZ

APPLICANT – Harold Weinberg, P.E., for Maria Musacchio, owner.

SUBJECT – Application September 16, 2005 – Pursuant to ZR §73-622 Special Permit for an In-Part Legalization to a single family home which exceeds the allowable floor area ratio and is less than the allowable open space, §23-141 and exceeds the maximum allowable perimeter wall height, §23-631. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 1060 82nd Street, South side, 197'3" west of 11th Avenue, between 10th Avenue, Block 6012, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Harold Weinberg, Maria Musacchio and Philip Musacchio.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown.....3

Abstain: Commissioner Hinkson.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 7, 2006, acting on Department of Buildings Application No. 301859781, reads in pertinent part:

- “1. The proposed enlargement exceeds the allowable floor area ratio and increases the degree of non-compliance contrary to Sections 23-141 and 54-31 of the Zoning Resolution.
2. The open space is less than the allowable open space and is contrary to Section 23-141 of the Zoning Resolution; the lot coverage exceeds the maximum and is contrary to Section 23-141 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area ratio (FAR), open space, and lot coverage, contrary to ZR §§ 23-141 and 54-31; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City Record*, with continued hearings on September 26, 2006 and October 24, 2006, and then to decision on October 24, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 10, Brooklyn,

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recommends disapproval of this application, citing concerns about neighborhood character; and

WHEREAS, certain neighbors provided testimony in opposition to the application, citing concerns about illegal work, plan discrepancies, the pitch of the roof, the accuracy of the submitted streetscape, and a proposed downzoning of the area; and

WHEREAS, however, certain neighbors provided testimony in support of the application; and

WHEREAS, the Board notes that the owner of the subject premises enlarged the existing home illegally without the requisite DOB permits; and

WHEREAS, initially, the applicant brought a variance application to legalize the illegal enlargement in its entirety; and

WHEREAS, this application was withdrawn prior to calendaring and the application is now for a home enlargement under the special permit; and

WHEREAS, the existing enlarged building at the site is a three-story single-family home with a perimeter wall height of 23 feet and a total height of 35 feet; and

WHEREAS, the applicant proposes to legalize components of the illegally completed enlargement and to modify other components in order to comply with the parameters of the special permit; and

WHEREAS, the subject lot is located on the west side of 82nd Street, between 10th and 11th Avenues; and

WHEREAS, the subject lot has a total lot area of 2,425 sq. ft., and was occupied by a 1,653.3 sq. ft. (0.68 FAR) single-family home, prior to the noted enlargement; and

WHEREAS, the Board notes that the applicant denies that this is a true characterization of the former building, but the Board has reviewed building plans that support this assertion; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,653.3 sq. ft. (0.68 FAR) to 2,235.29 sq. ft. (0.92 FAR); the maximum floor area permitted is 1,455 sq. ft. (0.60 FAR, with an attic bonus); and

WHEREAS, the proposed enlargement will maintain the existing non-complying open space of 1,518 sq. ft. (1,576.3 sq. ft. is the minimum required) and the existing non-complying lot coverage of 37.4 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will be within the footprint of the existing home and will not expand horizontally into any of the yards; and

WHEREAS, specifically, the proposed enlargement will maintain an existing non-complying front yard of 10'-4 1/2", one non-complying side yard of 0'-8 1/2", one complying side yard of 7'-1 1/2", and a complying rear yard of 34'-4 1/2"; and

WHEREAS, the applicant initially proposed to maintain the as-built perimeter wall height of 23 feet (21 feet is the maximum permitted) and total height of 35 feet (35 feet is the maximum permitted); and

WHEREAS, at hearing, the Board expressed concern

about the perimeter wall and total height; and

WHEREAS, specifically, the Board noted that the special permit only allows the perimeter wall to exceed 21 feet if there are neighboring pre-existing buildings that have higher perimeter walls; in such a case, the perimeter wall height may match, but not exceed, that of the adjacent building; and

WHEREAS, further, the Board notes that the illegally-constructed third floor is not the equivalent of a legal pre-existing condition; and

WHEREAS, at the Board's request, the applicant submitted a streetscape reflecting that five homes on the block have a perimeter wall height within the range of 20'-3" to 22'-0", one has a wall height of 27'-0", and one has a wall height of 32'-6"; and

WHEREAS, the Board has reviewed the submitted photographs and streetscape and has determined that the adjacent buildings have perimeter walls well below the purported 23 feet; and

WHEREAS, accordingly, the Board requested that the perimeter wall height be reduced; and

WHEREAS, in response to the Board's concern, the applicant reduced the proposed perimeter wall height from 23 to 21 feet; and

WHEREAS, as to total height, the Board asked the applicant to explore alternatives of reducing the ridge and height, including changing the peak of the roof so that the overall proposed height is compatible with neighboring homes; and

WHEREAS, in response to the Board's request, the applicant lowered the ridge beam, and reduced the total height from 35 feet to 32 feet; and

WHEREAS, the applicant represents that the proposed height cannot be reduced any more and the pitch of the roof cannot be altered because then there would not be eight feet of height on the second floor; and

WHEREAS, additionally, the applicant represents that if the height were decreased or the pitch altered any more there would not be seven feet of stairwell clearance to the third floor and the resulting staircase would not be useable; and

WHEREAS, the applicant submitted an analysis which indicates the minimum head room required for a viable staircase to the attic; and

WHEREAS, the applicant made representations about the requirements for floor to ceiling heights and submitted plans with inconsistent height calculations; and

WHEREAS, the Board asked the applicant to revise the plans to reflect the actual floor to ceiling heights and the required space between floors; and

WHEREAS, in addition to the above, the Board asked the applicant to submit a streetscape, detailing the height and roof conditions of the homes on the street; and

WHEREAS, certain neighbors provided testimony that the buildings across the street have flat roofs and that the proposed ridge beams are out of character; and

WHEREAS, the applicant submitted a streetscape that reflects homes with comparable heights and roof designs; and

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WHEREAS, the Board finds that the modified height and roof's peak are compatible with homes in the immediate vicinity; and

WHEREAS, the Board also notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit in the subject zoning district; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for FAR, open space, and lot coverage, contrary to ZR §§ 23-141 and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 13, 2006"-(12) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall contain a maximum of 582 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,235.29 sq. ft., a total FAR of 0.92, a perimeter wall height of 21'-0", and a total height of 32'-0", all as illustrated on the BSA-approved plans;

THAT the following shall be the parameters of the yards and lot coverage: open space of 1,518 sq. ft., lot coverage of 37.4 percent, a front yard of 10'-4 1/2", one side yard of 0'-8 1/2", one side yard of 7'-1 1/2", and a rear yard of 34'-4 1/2";

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
November 14, 2006.

41-06-BZ

APPLICANT– Steven Sinacori, Stadtmauer Bailkin, LLP, for New York Hospital Queens, owner.

SUBJECT – Application March 9, 2006 – Variance pursuant to Z.R. §72-21 to allow a predominantly below-grade group parking facility, accessory to New York Hospital Queens, to violate applicable front and side yard requirements. Site is located within R4 and R4/C1-2 districts (proposed as part of a Large Scale Community Facility Plan); contrary to Z.R. §24-33, §24-34, and §24-35. 42-06-BZ: Variance pursuant to Z.R. §72-21 to allow a new five-story hospital building, to be constructed on the existing campus of New York Hospital – Queens, to violate applicable height, setback and rear yard equivalent requirements. Project site is located within an R4 district (proposed as R6 within Large Scale Community Facility Plan); contrary to Z.R. §24-522 and §24-382.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West side of 141st Street, Block 6410, Lots 1, 19, 21, 24, 25, 26, 28, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Steven Sinacori.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 17, 2006, acting on Department of Buildings Application No. 402276817, reads, in pertinent part:

1. Proposed bulkheads in required front yards are contrary to Z.R. Section 24-33 and 24-34.
2. Proposed Obstruction in required side yard is contrary to Z.R. Sections 24-33"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a portion of the Queens campus of the New York Hospital, within an R4/C1-2 zoning district, and as part of a Large Scale Community Facility Plan, the proposed construction of an underground accessory group parking facility (the "Garage"), the bulkheads of which encroach into the required front and side yard, contrary to ZR § 24-33 and 24-34; and

WHEREAS, the proposed Garage is a 122,368 sq. ft. three-level (two below grade, one at grade), 372 space (pursuant to a City Planning Commission ("CPC") special permit, discussed below) accessory parking facility; and

WHEREAS, the applicant states that that the proposed Garage facility is composed of: (a) a 40,603 square foot below-grade cellar level with 94 self-parking spaces; (b) a 40,603 square foot below-grade sub-cellar level with 199

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attended parking spaces; and (c) a 41,162 square foot open on-grade level with 79 self-parking spaces and 19 reservoir spaces; and

WHEREAS, the applicant notes that in response to concerns expressed by the community, the originally proposed four-story, 500-space garage design, which had included two basement parking levels, two above-grade parking levels, and two levels of medical office space on top of the parking structure, was abandoned; the applicant notes that community members desired a smaller, lower and substantially less obtrusive structure; and

WHEREAS, the non-complying condition addressed in this application is as follows: two approximately 10.5-foot to 16.75-foot high stairway bulkheads, with respective footprints of 210 and 480 square feet, located within the required front yard along 141st Street; one of these bulkheads also encroaches into the side yard; and

WHEREAS, since these obstructions are not permitted in the front and side yard, variances are required; and

WHEREAS, a public hearing was held on this application on October 24 after due notice by publication in the *City Record*, and then to decision on November 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 7, Queens, recommends conditional approval of this application, and appeared at hearing to support it; and

WHEREAS, the Community Board conditions concern traffic control and pedestrian safety, and all have been accepted by the applicant and will be integrated into the broader campus development plan, subject to approval of certain of the proposed conditions by the City's Department of Transportation; and

WHEREAS, the Coalition to Preserve Queenboro Hill and certain neighbors appeared in opposition to this application; the concerns of the opposition are addressed below; and

WHEREAS, this application was brought on behalf of the New York Hospital – Queens (hereinafter, the "Hospital"), a not for profit institution; and

WHEREAS, the Hospital's campus (the "Campus") occupies two separate zoning lots: (1) the majority of Block 5165, encompassing 235,964.35 square feet of lot area and bounded by Main Street to the west, Booth Memorial Avenue to the south, 141st Street to the east, and 56th Avenue to the north; and (2) the majority of the block to the south across Booth Memorial Avenue (Block 6401, the subject block), encompassing 44,199 square feet of lot area, and bounded by Main Street to the west, 58th Avenue to the south, 141st Street to the east and Booth Memorial Avenue to the north; and

WHEREAS, the subject block is currently comprised of various individual tax lots, proposed to be merged into Lot No. 19; and

WHEREAS, the applicant states that other actions relative to development on the Campus are being pursued as well; and

WHEREAS, specifically, the instant application was brought concurrently with another variance application (BSA

Cal. No. 42-06-BZ), also granted the date hereof, for the proposed construction on Block 5165 of a five-story Use Group 4 hospital building, with a new entrance and lobby (the "Hospital Building"), which does not comply with applicable zoning requirements concerning rear yard equivalent and height and setback; and

WHEREAS, additionally, the applicant notes that the Hospital is also seeking the following actions through CPC: (1) a zoning map change, pursuant to New York City Charter § 197(c) rezoning Block 5165 from an R4 zoning district to an R6 zoning district, and permitting increased floor area necessary for the Hospital Building; (2) an authorization for a large-scale community facility development pursuant to ZR § 79-21; (3) an authorization, pursuant to ZR § 79-31, permitting the proposed Garage to be located across Booth Memorial Avenue from the Hospital's main campus but within the proposed large-scale community facility development; and (4) a special permit, pursuant to ZR § 74-53, permitting the Garage to have 222 parking spaces in excess of the 150 parking space maximum for group parking facilities permitted by ZR § 25-12; and

WHEREAS, the specific portion of the subject block to be developed with the Garage is located on the north side of the subject block, and occupies approximately two-thirds of the block's total area (the "Development Site"); and

WHEREAS, the Development Site is currently occupied by five two-story buildings that will be demolished, as well as open parking lots; and

WHEREAS, the applicant notes that all vehicular circulation, entering and exiting the Garage, is limited to Booth Memorial Avenue; parking traffic is thereby diverted from the residential portion of 141st Street.; and

WHEREAS, the applicant further notes that the Garage will be enclosed with decorative fencing comprised of a three-foot high brick base stretching between six-foot high brick piers, with wrought iron fencing filling the space between the piers and extending up to the same six-foot height; and

WHEREAS, the applicant reports that the brick base fence and extensive proposed landscaping will effectively block headlights from shining across 141st Street onto homes, and that all lighting is directed downward to further reduce the intrusion of light; and

WHEREAS, the two one-story brick clad bulkheads are for the exit stairs, elevators and mechanical ventilation along 141st Street, and the corner of 141st Street and Booth Memorial Avenue; and

WHEREAS, the applicant notes that the bulkhead along 141st Street is 12'-0" wide on the street side, 10'-6" high from the sidewalk to the top of its parapet, and 17'-6" deep from the property line, and that the bulkhead at the corner of Booth Memorial Avenue and 141st Street is 14'-6" high from the sidewalk along Booth Memorial Avenue and 16'-9" high along 141st Street; and.

WHEREAS, the applicant states that the two bulkheads must be located in the front yard, and one must be located in a side yard, in order to create a sufficient layout for the

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proposed Garage; and

WHEREAS, the proposed layout is necessary to accommodate the proposed amount of parking spaces, which in turn is necessary due to the contemplated parking demand for the Hospital; and

WHEREAS, at hearing, the applicant amplified upon the above argument; and

WHEREAS, specifically, the applicant noted that bulkheads are located within the front and side yard in order to not conflict with the proposed parking layout on each level of the Garage, and that the location of the bulkheads elsewhere would result in the loss of at least 12 parking spaces (and increased on-street parking demand) and would also lead to increased construction costs; and

WHEREAS, the Board credits the applicant's statements as to the Hospital's programmatic needs and the limitations of a Garage layout that does not allow for the location of the bulkheads in the front and side yard; and

WHEREAS, the Board also notes that the Garage must be constructed at a location within the subject block such that it can integrate with and be proximate to the other Hospital components; the Development Site is the most efficient and logical location for the Garage, given that it will be across the street from the primary Hospital campus; and

WHEREAS, based upon the above, the Board finds that the adjacency of the existing Hospital campus to the Development Site constitutes a unique physical condition, which, when considered in conjunction with the programmatic need of the Hospital to construct the Garage with the proposed amount of spaces, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Hospital is a not-for-profit organization and the proposed development will be in furtherance of its educational mission; and

WHEREAS, the applicant represents that the Garage will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as noted above, all vehicular circulation, entering and exiting the parking facility, is limited to Booth Memorial Avenue; parking traffic is thereby diverted from the residential portion of 141st Street; and

WHEREAS, the Garage will be enclosed with the above-noted fencing and will be landscaped, which will effectively block headlights from shining across 141st Street onto homes; and

WHEREAS, further, all other lighting is directed downward to further reduce the intrusion of light; and

WHEREAS, the Board notes that the bulkheads will be enclosed in the same brick treatments as the fence and will not affect nearby residential properties, given the limited heights, which are less than the height of an as-of-right structure; and

WHEREAS, the heights of the bulkheads also match the

heights of the boundary walls along 49th Street (in the front yard) and also with the height of the boundary wall between the site and the adjacent residential building (in the side yard); and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the programmatic needs of the Hospital; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Garage is designed to address the Hospital's anticipated parking needs; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, at hearing, the opposition made the following arguments: (1) that the Garage building will negatively effect nearby homes; (2) that the instant application does not address traffic impact; (3) that the overall increase in ambulance and pedestrian traffic will negatively effect the neighborhood; and (4) that the applicant initially represented to the community that a sub-surface garage could not be built; and

WHEREAS, as to the first argument, the Board has already concluded that the above-grade aspect of the Garage will be appropriately screened and landscaped, and that the location and size of the bulkheads will not create any negative effects; and

WHEREAS, the Board notes that the Community Board representative stated at hearing that the bulkheads were acceptable because they were enclosed and within the height of the boundary wall; and

WHEREAS, as to the second and third argument, the Board notes that overall traffic impacts of any type are not before it, and have been addressed by CPC as part of its approval of the above-mentioned actions; and

WHEREAS, as to the fourth argument, the Board notes that the applicant explained that the initial representation to the community about the viability of a below-grade garage was based upon an incomplete site analysis; a subsequent analysis revealed that while expensive, such a garage could be constructed; and

WHEREAS, in any event, the Board concludes that the Hospital's willingness to accommodate the concerns of the community by building a more expensive below-grade structure with less parking spaces belies any insinuation that the earlier representation was made in bad faith or should have some bearing on the Board's consideration of this application; and

WHEREAS, accordingly, the Board rejects all of the opposition arguments as meritless; and

WHEREAS, CPC, as Lead Agency, has conducted an environmental review (CEQR No. 05DCP066Q) of the subject actions before the BSA, and of the related actions approved by

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the CPC noted above; and

WHEREAS, CPC issued a Conditional Negative Declaration (CND) for CEQR No. 05DCP066Q, on September 25, 2006.

Therefore it is Resolved, that the Board of Standards and Appeals adopts the CPC CEQR determination and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a portion of the Queens campus of the New York Hospital, within an R4/C1-2 zoning district, and as part of a Large Scale Community Facility Plan, the proposed construction of an underground accessory group parking facility, the bulkheads of which encroach into the required front and side yard, contrary to ZR § 24-33 and 24-34; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received September 12, 2006”–ten (10) sheets; and *on further condition*:

THAT all front and side yard encroachments shall be as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code (including those provisions related to construction-related vibrations), and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 14, 2006.

42-06-BZ

APPLICANT – Steven Sinacori, Stadtmauer Bailkin, LLP for New York Hospital Queens, owner.

SUBJECT – Application March 9, 2006 – Variance pursuant to Z.R. §72-21 to allow a predominantly below-grade group parking facility, accessory to New York Hospital Queens, to violate applicable front and side yard requirements. Site is located within R4 and R4/C1-2 districts (proposed as part of a Large Scale Community Facility Plan); contrary to Z.R. §24-33, §24-34, and §24-35. 42-06-BZ: Variance pursuant to Z.R. §72-21 to allow a new five-story hospital building, to be constructed on the existing campus of New York Hospital – Queens, to violate applicable height, setback and rear yard equivalent requirements. Project site is located within an R4 district (proposed as R6 within Large Scale Community Facility Plan); contrary to Z.R. §24-522 and §24-382.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West side of 141st Street, Block 6410, Lots 1, 19, 21, 24, 25, 26, 28, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Steven Sinacori.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 28, 2006, acting on Department of Buildings Application No. 402270047, reads, in pertinent part:

- “1. Proposed building does not comply with the required rear yard equivalent requirements of Z.R. 24-382.
2. Proposed building does not comply with the height [and] setback requirements of Z.R. 24-522.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a portion of the Queens campus of the New York Hospital, within an R6 zoning district, and as part of a Large Scale Community Facility Plan, the proposed construction of a five-story Use Group 4 hospital building, (the “Proposed Building”), which does not comply with applicable zoning requirements concerning rear yard equivalent, and height and setback, contrary to ZR §§ 24-382 and 24-522; and

WHEREAS, the Proposed Building is five stories and has a total height of 73’-5” at its Main Street frontage; it will occupy 97,219 sq. ft.; and

WHEREAS, a new 2,098 sq. ft. entrance and lobby to the Hospital campus will be integrated with the Proposed Building; and

WHEREAS, the non-complying parameters are as follows: (1) a 20’-0” encroachment into the required rear yard equivalent at a height of 14’-6” (a full 30 ft. rear yard equivalent is required for the full height of the building); and (2) a varying encroachment into the required setback of 15’-0” at a height of 60’-0” (a full setback of 15 ft. must be provided at a height of 60 ft. for the length of the building); and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in the *City Record*, and then to decision on November 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, former Vice-Chair Babbar, and current Vice-Chair Collins; and

WHEREAS, Community Board 7, Queens, recommends conditional approval of this application, and appeared at hearing to support it; and

WHEREAS, the Coalition to Preserve Queenboro Hill and certain neighbors appeared in opposition to this application; and

WHEREAS, as to the instant application, the only stated objection was an unfounded concern about the proximity of the adjacent gas station to oxygen tanks that allegedly will be located within the Proposed Building; and

WHEREAS, however, most of the concerns expressed by

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the opposition at hearing related to a separate variance application (described below) and therefore are discussed in the resolution for that application; and

WHEREAS, this application was brought on behalf of the New York Hospital - Queens (hereinafter, the "Hospital"), a not for profit institution; and

WHEREAS, the Hospital's campus (the "Campus") occupies two separate zoning lots: (1) the majority of the subject block, encompassing 235,964.35 square feet of lot area and bounded by Main Street to the west, Booth Memorial Avenue to the south, 141st Street to the east, and 56th Avenue to the north; and (2) the majority of the block to the south across Booth Memorial Avenue (Block 6401), encompassing 44,199 square feet of lot area, and bounded by Main Street to the west, 58th Avenue to the south, 141st Street to the east and Booth Memorial Avenue to the north; and

WHEREAS, the subject block is currently occupied by the following Hospital components: (1) the eight-story Main Building, which was the original Booth Memorial Hospital; (2) the eight-story North Building; (3) the three-story Ancillary Building; and (4) the two-story East Building; and

WHEREAS, the applicant states that the Hospital occupies almost the entire subject block but for a non-conforming gasoline station located at the northwest corner of the block on a separate tax lot; and

WHEREAS, the applicant states that other actions relative to development on the Campus are being pursued as well; and

WHEREAS, specifically, the instant application was brought concurrently with another variance application (BSA Cal. No. 41-06-BZ), also granted the date hereof, for a construction of a predominantly below-grade parking structure (the "Garage") for the Hospital on an adjacent part of the Hospital campus, which does not comply with applicable front [and side yard] requirements; and

WHEREAS, additionally, the applicant notes that the Hospital is also seeking the following actions through CPC: (1) a zoning map change, pursuant to New York City Charter § 197(c), rezoning the subject block from an R4 zoning district to an R6 zoning district, and permitting increased floor area necessary for Proposed Building; (2) an authorization for a large-scale community facility development pursuant to ZR § 79-21; (3) an authorization, pursuant to ZR § 79-31, permitting the location of the proposed Garage to be located across Booth Memorial Avenue from the subject block but within the proposed large-scale community facility development; and (4) a special permit, pursuant to ZR § 74-53, permitting the Garage to have 222 parking spaces in excess of the 150 parking space maximum for group parking facilities permitted by ZR § 25-12; and

WHEREAS, the zoning map change was approved by the City Council on October 25, 2006; the proposed floor area and other bulk parameters of the Proposed Building (aside from rear yard equivalent and setback) comply with the new R6 zoning requirements; and

WHEREAS, the specific portion of the Hospital campus to be developed with the Proposed Building is located at on the far west side of the subject block, along Main Street, adjacent and

to the south of the above-mentioned gas station (the "Development Site"); and

WHEREAS, the Development Site is currently occupied by a two-level 150 space parking structure that will be demolished; parking will occur within the proposed Garage to be constructed on the adjacent block; and

WHEREAS, the applicant states that the proposed non-complying bulk of the Proposed Building is due to the Hospital's need to enhance its quality of services and to meet the need of increasing community demand for clinical services; and

WHEREAS, more specifically, the waivers are necessary to create a building with floor plates that will meet the programmatic needs of the Hospital; and

WHEREAS, the Proposed Building will allow the Hospital to expand its cardiology and surgery services, increase the number of critical care beds, and consolidate acute care services currently located throughout the Hospital campus to a new and efficient facility; the increase in beds is from 439 to 519; and

WHEREAS, specifically, the applicant states that the Proposed Building will involve the following components: (1) an upgrade to cardiovascular services including the replacement and enlargement of the cardiac catheterization suite; (2) more cardiac related procedure rooms and increased recovery space to meet current and projected needs; (3) a new and enlarged suite for non-invasive cardiology programs will also be constructed as the entire second floor of the Hospital will be devoted to a state-of-the-art cardiology center; (4) upgrades to the ambulatory surgery facilities including the consolidation of operating rooms and cystoscopy rooms into a large modern suite; (5) the number of operating rooms and recovery beds will be increased; (6) a separate endoscopy suite will be established; and (7) two additional inpatient units will be created, providing a total of 80 additional beds; and

WHEREAS, additionally, the applicant notes that the Hospital seeks to develop a new multi-purpose Main Street entrance to the Hospital complex that includes a new off-street, canopied drop-off area for inpatients, visitors and ambulatory outpatients, as well as providing covered access to the Hospital auditorium; and

WHEREAS, the applicant states that the new entrance and off-street drop-off area, located immediately south of the Proposed Building, will serve to eliminate street congestion caused by cars queuing for sidewalk access, will provide shelter from the elements for patients entering and exiting the Hospital, and will further enhance hospital security and efficiency by providing a central entrance to the Hospital complex; and

WHEREAS, the applicant argues that the new Main Street entrance cannot be built and integrated into the Hospital's modernization/expansion plan without the requested rear yard equivalent variance; and

WHEREAS, specifically, in order to provide a complying rear yard equivalent for the Proposed Building, it would be necessary to move it south into the area to be

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occupied by the new Main Street entrance and drop-off area, thereby eliminating a crucial element to the proposed Hospital development and exacerbating current patterns of patient and vehicle congestion that the new entrance is designed to eliminate; and

WHEREAS, as to setback, the applicant notes that the Proposed Building's roof top mechanical room encroaches into the required 15'-0" setback, as indicated above; and

WHEREAS, the applicant states that the mechanical room has been placed at the front of the roof within the setback to optimize mechanical system efficiency and usable interior space; and

WHEREAS, the applicant notes that the design also results in a cost savings of at least two million dollars; and

WHEREAS, the applicant further states that the setback encroachment of the mechanical room will allow a floor plate that permits more efficient use of the Hospital space, more efficient use of Hospital staff, greater patient comfort and substantially reduced construction and operating costs; and

WHEREAS, at hearing, the applicant amplified upon the above arguments; and

WHEREAS, specifically, the applicant noted that a complying building, constructed without the requested waivers, would result in the loss of 18 of the additional hospital beds, three of the proposed treatment rooms, and one-third of the required mechanicals; and

WHEREAS, the applicant explains that the implementation of the required 30 ft. rear yard equivalent and compliance with the required setback would diminish the floor plates and result in these losses; and

WHEREAS, the Board credits the applicant's statements as to the Hospital's programmatic needs and the limitations of a complying development; and

WHEREAS, the Board also notes that the Proposed Building must be constructed at a location within the subject block such that it can integrate with the other Hospital components and the new entrance; the Development Site is the most efficient and logical location; and

WHEREAS, based upon the above, the Board finds that the adjacency of the existing Hospital buildings to the Development Site constitutes a unique physical condition, which, when considered in conjunction with the programmatic need of the Hospital to construct the Proposed Building, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Hospital is a not-for-profit organization and the proposed development will be in furtherance of its mission; and

WHEREAS, the applicant represents that the Proposed Building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes the immediate surrounding neighborhood (within a 400-foot radius) is developed with a mix of attached and unattached dwellings and apartments ranging from one to three-stories, one-story

commercial buildings, the Kissena Corridor Park, and the Queens Botanical Gardens; and

WHEREAS, the applicant observes that north of the subject block, the immediate surrounding neighborhood consists primarily of Kissena Corridor Park and the Queens Botanical Gardens; east of the site, the immediate surrounding neighborhood consists of attached and unattached residential brick buildings ranging in height from one to three-stories and three-story brick apartment buildings; west of the site, the immediate surrounding neighborhood consists primarily of one-story commercial buildings and attached and unattached residential brick buildings ranging in height from one to three-stories; and south of the site, the immediate surrounding neighborhood consists of attached and unattached residential brick buildings ranging in height from one to two-stories; and

WHEREAS, the applicant further observes that the surrounding neighborhood within a quarter-mile of the Hospital is developed with a mix of attached and unattached residential buildings ranging from one to three-stories high, three to fifteen-story high apartment buildings, public educational facilities, the Horace Harding Expressway, and the Kissena Corridor Park; and

WHEREAS, the Board notes that the proposed rear yard equivalent waiver only affects the non-conforming gas station adjacent to the north; and

WHEREAS, however, the Board observes that any residential redevelopment of this adjacent site can offset the effect of the rear yard equivalent waiver since the site is on a corner and has two frontages from which sufficient light and air can be drawn; and

WHEREAS, further, the Board notes that the proposed setback encroachment will only be visible from another Hospital building; and

WHEREAS, the Board also notes that the modest increase in street wall height is along Main Street, which is a wide street where such an increase will have minimal impact; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the existing buildings on the zoning lot and the programmatic needs of the Hospital; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Proposed Building is designed to address the Hospital's present programmatic needs; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, CPC, as Lead Agency, has conducted an environmental review (CEQR No. 05DCP066Q) of the subject actions before the BSA and of related actions approved by CPC,

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noted above; and

WHEREAS, CPC issued a Conditional Negative Declaration (CND) for CEQR No. 05DCP066Q, on September 25, 2006;

Therefore it is Resolved, that the Board of Standards and Appeals adopts the CPC CEQR determination and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a portion of the Queens campus of the New York Hospital, within an R6 zoning district, and as part of a Large Scale Community Facility Plan, the proposed construction of a five-story Use Group 4 hospital building, which does not comply with applicable zoning requirements concerning rear yard equivalent and setback, contrary to ZR §§ 24-382 and 24-522; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 12, 2006"- sixteen (16) sheets; and *on further condition*:

THAT rear yard equivalent and height and setback shall be as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 14, 2006.

158-06-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Debbie Tokayer, owner.

SUBJECT – Application July 18, 2006 – Pursuant to ZR §73-622 for the enlargement of a single family residence which is contrary to ZR §23-141 for open space and floor area, ZR §23-461 for less than the minimum side yards and ZR §23-47 for less than the required rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1410 East 22nd Street, West side of East 22nd Street, 380' south of Avenue M, Block 7657, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Steven Sinacori.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 14, 2006, acting on Department of Buildings Application No. 302180324, reads in pertinent part:

1. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Open Space Ratio (OSR) is less than the required 150%.
3. Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0".
4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio (FAR), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 24, 2006, after due notice by publication in *The City Record*, and then to decision on November 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the west side of East 22nd Street, between Avenue M and Avenue N; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 2,568 sq. ft. (0.64 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the proposed enlargement will be two stories with a cellar and attic, and will be located at the rear of the property; and

WHEREAS, the applicant seeks an increase in the floor area from 2,568 sq. ft. (0.64 FAR) to 3,520 sq. ft. (0.88 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to reduce the open space ratio from 80.4 percent to 72.7 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing complying side yard of 11'-8" and the existing non-complying side yard of 4'-3" (side yards of 13'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, the applicant proposes to provide a rear yard of 20'-0" (30'-0" is the minimum required); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the wall height and total height, which

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comply with zoning district regulations, will not change; and
WHEREAS, the Board notes that the enlargement is confined to the rear of the home; and

WHEREAS, the Board also notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit in the subject zoning district; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 6, 2006"-(6) sheets and "October 30, 2006"-(5) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall contain a maximum of 841 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the parameters of the building: a total floor area of 3,520 sq. ft. (0.88 FAR), a wall height of 23'-2", a total height of 32'-7", a front yard of 15'-0", one side yard of 4'-3", one side yard of 11'-8", a rear yard of 20'-0", and an open space ratio of 72.7 percent, all as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,

November 14, 2006.

290-04-BZ

APPLICANT – Stuart A. Klein, Esq., for Alex Lokshin – Carroll Gardens, LLC, owner.

SUBJECT – Application August 20, 2004 – under Z.R. §72-21 to permit, in an R4 zoning district, the conversion of an existing one-story warehouse building into a six-story and penthouse mixed-use residential/commercial building, which is contrary to Z.R. §§22-00, 23-141(b), 23-631(b), 23-222, 25-23, 23-45, and 23-462(a).

PREMISES AFFECTED – 341-349 Troy Avenue (a/k/a 1515 Carroll Street), Northeast corner of intersection of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Stuart A. Klein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for decision, hearing closed.

159-05-BZ

APPLICANT – Vito J. Fossella, P.E., for Antonio Ciccotto, owner.

SUBJECT – Application July 7, 2006 – Variance under ZR §72-21 to allow a three (3) story mixed-use building containing residential use on the upper floors and retail use (UG 6) on the ground and cellar levels on a site zoned R3X and R3X/C2-1; contrary to ZR §22-00.

PREMISES AFFECTED – 880 Annadale Road, located on the west of the corner formed by the intersection of Annadale Road and South Railroad Avenue, Block 6249, Lot 436T, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Samuel M. El-Meniawy.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for continued hearing.

359-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application December 15, 2006 – Special Permit under Z.R. §73-211– to allow an existing gasoline service station with accessory convenience store in an R5/C2-2 zoning district.

PREMISES AFFECTED – 1927-1933 Flatbush Avenue, northeast corner of Flatbush Avenue and Kings Highway, Block 7819, Lots 20 & 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

MINUTES

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for decision, hearing closed.

363-05-BZ

APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.

SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. §72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. §§23-141, 23-45(a), 23-462(a), 23-861, and 25-23.

PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for decision, hearing closed.

54-06-BZ

APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.

SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. §72-21 to permit the development of a three-story and cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family dwellings which would be demolished as part of the proposal. The proposal seeks to vary ZR §113-51 (Floor Area); §113-55 and §23-631 (Perimeter Wall Height, Total Height and Sky Exposure Plane); §113-542 and §23-45 (Front Yard and Setback); §113-543 and §23-461(a) (Side Yard); §113-544 (Rear Yard); §113-561 and §23-51 (Parking); and §113-22 (Loading Berth).

PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik, David Shtierman, Megr. Gutfreund

For Opposition: Stuart Klein, Marin Pope, Michael Gregorio, Alfred Langner, Barry Rosner, David Lederer and Betty

Cohen.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for continued hearing.

130-06-BZ

APPLICANT – Anderson Kill & Olick, P.C., for Amsterdam Nursing Home Corp., owner.

SUBJECT – Application June 22, 2006 – Variance pursuant to Z.R. §72-21 to permit a one-story addition in the rear yard of an existing nursing home. The Premise is located in R8 and R8/C1-4 zoning districts. The proposal is contrary to Z.R. §24-33(b)(3). The rear yard proposed for the addition is currently vacant.

PREMISES AFFECTED – 1060 Amsterdam Avenue, West side of Amsterdam Avenue between 112th and 113th Streets, Block 1884, Lots 29, 36, Borough of Manhattan.

COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Robert Cook.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for decision, hearing closed.

132-06-BZ

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for 122 Greenwich Owner, LLC, owner.

SUBJECT – Application June 23, 2006 – Variance pursuant to Z.R. §72-21 to allow an eleven (11) story residential building with ground floor retail and community facility uses on a site zoned C6-2A and C1-6. The proposed building would contain 36 dwelling units and would be non-complying with respects to floor area, lot coverage, rear yard, height and setback, inner court, and elevator bulkhead requirements; contrary to Z.R. §§ 23-145, 35-31, 23-47, 35-24, 23-633, 23-851 and 33-42.

PREMISES AFFECTED – 122-136 Greenwich Avenue, northeast corner of Greenwich Avenue and 8th Avenue, Block 618, Lot 1, Borough of Manhattan

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stephen Lefkowitz, Bob Zuckerman and John Wong.

For Opposition: Doris Diether, CB #2.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for decision, hearing closed.

252-06-BZ

APPLICANT – Randolph Croxton, for Mount Hope

MINUTES

Community Center, owner.

SUBJECT – Application September 15, 2006 – Variance pursuant to Z.R. §72-21 to permit the construction of a four-story Use Group 4 community center facility. The premises is located in an R8 zoning district and is currently a vacant lot. The proposal is seeking waivers of Z.R. §24-36 and §24-393 (proposed portion of the new building located in the rear yard is not a permitted obstruction per Z.R. §24-33 (b) paragraph (3)). A waiver of §24-382 is also requested relating to the proposed portion of the new building on a through lot exceeding 110 feet in depth which requires a rear yard equivalent.

PREMISES AFFECTED – 55 East 175th Street, between Townsend Avenue and Walton Avenues, Lot 2850, Lot 38, Borough of The Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Randolph Croxton, James Rausse/Office of the Bronx Borough President Carrion, Xavier Rodriguez/CB #5 and Gunnar Friderksson.

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for continued hearing.

258-06-BZ

APPLICANT– Anderson Kill & Olick, P.E., for Our Lady of the Snows Church, owner.

SUBJECT – Application September 20, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed one-story church sanctuary which would be built on a portion of the site currently occupied by a parking lot. The applicant proposes to move out of its existing sanctuary on the same site, which was originally built as a gymnasium / auditorium for the parochial school. The Premises is located in an R2 zoning district. The proposal is seeking waivers of Z.R. §24-111 and §23-141 with respect to the proposed one-story addition (additional floor area) exceeding the permitted community facility floor area in an R2 zoning district.

PREMISES AFFECTED – 79-48 259th Street, 258-15 80th Avenue, 79-33 258th Street, entire block bounded by Union Turnpike, 79th Avenue, 259th Street, 80th Avenue, 258th Street, Block 8695, Lots 1, 60, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Robert Cook.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 4:20 P.M.

BULLETIN

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AND APPEALS

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Volume 91, No. 45

November 30, 2006

DIRECTORY

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Tuesday, November 21, 2006**

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363-04-BZ	6002 Fort Hamilton Parkway, Brooklyn
757-89-BZ	401 Seventh Avenue, Manhattan
17-93-BZ	160 Columbus Avenue, Manhattan
139-05-BZ	250 East 54 th Street, Manhattan
117-06-A	1373 East 13 th Street, Brooklyn
166-06-BZY	84-59 162 nd Street, Queens
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Affecting Calendar Numbers:

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141-06-BZ	2084 60 th Street, Brooklyn
181-06-BZ	471 Washington Street, Manhattan

DOCKETS

New Case Filed Up to November 21, 2006

302-06-BZ

1791 Ocean Parkway, North south of Avenue R between Ocean Parkway and East 7th Street., Block 6663, Lot(s) 46 Borough of **Brooklyn, Community Board: 15**. Under 72-21-Proposed to construct a mezzanine and a two story enlargement over the existing two-story structure in the center of the subject community facility building.

303-06-BZ

1081 Tompkins Avenue, 220 feet north of the intersection of Tompkins Avenue and Richmond Avenue., Block 3107, Lot(s) 12 Borough of **Staten Island, Community Board: 2**. (SPECIAL PERMIT) 73-30-For a non-accessory radio tower, which is a public utility wireless communications facility and will consist of 75-foot stealth flagpole (77 feet to top of gold ball), together with antennas mounted therein and related equipment.

304-06-BZ

106-02 Astoria Boulevard, Southeast Corner of Astoria Boulevard and 106th Street, Block 1639, Lot(s) 1 Borough of **Queens, Community Board: 3**. Under 72-21-To permit the construction of a detached single family home on a vacant corner zoning lot, which does not provide the required 10'-0" front-yard.

305-06-A

9 Roosevelt Walk, Eastside 171.22' south of Oceanside Avenue., Block 16350, Lot(s) p/o 400 Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3-Propose to enlarge the existing first floor and construct a new second floor on a home.

306-06-BZ

50 Lawrence Avenue, Located on the southside of Lawrence Avenue approximately 36 feet east of McDonald Avenue, Block 5422, Lot(s) 10 Borough of **Brooklyn, Community Board: 14**. Under 72-21-To permit the construction of a six-story religious school.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

DECEMBER 12, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 12, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

615-57-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application October 10, 2006 – Extension of term for ten years, waiver of the rules for a gasoline service station (Exxon) which expired on June 5, 2003 and an extension of time to obtain a certificate of occupancy in an R-4 zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, between Kissena Boulevard and 145th Place, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

304-82-BZ

APPLICANT – Bryan Cave, LLP, for Dansar, LLC, owner.

SUBJECT – Application October 6, 2006 – Re-open and amend an existing variance (§72-21) granted in 1984 for the conversion of floors two through nine in a commercial building to residential use with an existing commercial (UG6) on the first and cellar floors in an M1-5M zoning district.

PREMISES AFFECTED – 36 East 22nd Street, south side of East 22nd Street, 205' west of the corner of Park Avenue, south and East 22nd, Block 850, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

16-95-BZ

APPLICANT – Stadtmauer Bailkin, LP, for STA Parking Group, owner.

SUBJECT – Application September 29, 2006 – Extension of Time to complete construction, which expired on October 23, 2003, on a previously granted variance for a UG8 parking garage with accessory auto repairs and an amendment to permit the legalization of the ramps within the existing parking garage and the relocation of the accessory office from the first floor to the second floor in an R8B zoning district.

PREMISES AFFECTED – 434 East 77th Street, aka 433 East 76th Street, located between East 76th and 77th Street, between York and First Avenue, Block 1471, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #8M

395-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah Contract Vendee, owner; Meyer Unschorfer, lessee.

SUBJECT – Application June 16, 2006 – Request for a re-opening and amendment to a previously-granted variance (§ 72-21) that allowed bulk waivers for a new house of worship in an R5 district. The proposed amendment includes the following: (1) increase in floor area and FAR, (2) increase in perimeter wall height; and (3) minor reduction in front yard provided.

PREMISES AFFECTED – 1232 54th Street, southwest side 242'-6" southeast of the intersection formed by 54th and 12th Avenue, Block 5676, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

48-05-BZ

APPLICANT – Wachtel & Masyr, LLP, for Bethune West Associates, LLC, owner.

SUBJECT – Application October 30, 2006 – Request for a re-opening and amendment of a previously granted zoning variance that allowed a fifteen- (15) and three- (3) story residential building with ground floor retail use (UG 6), sixty-four (64) dwelling units and sixty (60) accessory parking spaces in C1-7A and C1-6A zoning districts. The proposed amendment includes the following: (1) ground floor level to change from retail to residential use; (2) dwelling units to increase from 64 to 84; (3) minor increase in lot coverage; and (4) modifications to the building's height and setback.

PREMISES AFFECTED – 469 West Street, aka 70 Bethune Street, West Street between Bethune Street and West 12th Street, Block 640, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

139-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Ann Fitzsimmons, lessee.

SUBJECT – Application July 6, 2006 – Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of mapped street (Oceanside Avenue) and the proposed upgrade of an existing private disposal system is contrary to the Section 35 of the General City Law and the Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 1 Irving Walk, east side of Irving Walk at intersection of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

CALENDAR

COMMUNITY BOARD #14Q

169-06-A

APPLICANT – Timothy Costello, for Breezy Point Cooperative, Inc., owner; Raymond Wasson, lessee.

SUBJECT – Application August 10, 2006 – Proposed reconstruction and enlargement of an existing one family dwelling located partially within the bed of mapped street (Oceanside Avenue) contrary to Section 35 of the General City Law. R4 Zoning District.

PREMISES AFFECTED – 175 Oceanside Avenue, Block 16350, Lot 400, Borough of Brooklyn.

COMMUNITY BOARD #14Q

DECEMBER 12, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 12, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

151-04-BZ

APPLICANT– Philips Nizer, LLP, for Fred M. Schildwachter & Son, Inc., c/o Dan Schildwachter, owner; Adriana A. Salamone, lessee.

SUBJECT – Application April 9, 2004 – Special Permit (§73-36) to permit the legalization of an existing physical culture establishment (Star Fitness) in an M3-1 Zoning District.

PREMISES AFFECTED – 1385 Commerce Avenue, southwest corner of Butler Place, Block 1385, Lot 13, Borough of The Bronx.

COMMUNITY BOARD #10BX

378-04-BZ

APPLICANT– Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (Section 72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to Section 42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

56-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, Esq., for Suri Blatt and Steven Blatt, owners.

SUBJECT – Application March 27, 2006 – Pursuant to ZR 73-622 Special Permit for the enlargement of an existing one family residence which exceeds the maximum allowed floor area and decreases the minimum allowed open space as per ZR 23-141 and has less than the minimum required rear yard as per ZR 23-47.

PREMISES AFFECTED – 1060 East 24th Street, East 24th Street between Avenue J and Avenue K, Block 7605, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

111-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application June 5, 2005 – Special Permit (73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (23-141); side yard (23-48) and perimeter wall height (23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #15BK

115-06-BZ

APPLICANT– Harold Weinberg, for Saul Mazor, owner.

SUBJECT – Application June 7, 2006 – Special Permit (73-622) for the enlargement of a single family detached residence. This application seeks to vary open space, floor area and lot coverage (23-141); side yard (23-461) and rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1820 East 28th Street, west side 140' south of Avenue R, between Avenue R and S, Block 6833, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

124-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Nasanel Gold, owner.

SUBJECT –Application June 13, 2004 – Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141); side yard (23-48) and rear yard (34-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1078 East 26th Street, East 26th Street between Avenue J and Avenue K, Block 7607, Lot 83, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

138-06-BZ

APPLICANT- Law Office of Fredrick A. Becker, for RH Realty LLC NY by Ralph Herzka, owner.

SUBJECT - Application July 5, 2006 - Special Permit (§73-622) for the enlargement of a single family residence.

This application seeks to vary open space and floor area (23-141(a)) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED - 3447 Bedford Avenue, between Avenue M and N, Block 7661, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

214-06-BZ

APPLICANT- Walter T. Gorman, P.E., for Sidney Esikoff & Norman Fieber, owners.

SUBJECT - Application August 24, 2006 - Special Permit (§11-411) for the re-establishment and extension of term for an existing gasoline service station, which has been in continuous operation since 1953. R3-2 zoning district.

PREMISES AFFECTED - 196-25 Hillside Avenue, northwest corner of 197th Street, Block 10509, Lot 265, Borough of Queens.

COMMUNITY BOARD #8Q

216-06-BZ

APPLICANT- Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT - Application August 28, 2006 - Special Permit (§11-411 & §11-412) for the re-establishment and extension of term for an existing automotive service station , which has been in continuous operation since 1961 and legalization of certain minor amendments to previously approved plans. C1-4/R6-A zoning district.

PREMISES AFFECTED - 35-17 Junction Boulevard, east side of Junction Boulevard between 35th and 37th Avenues, Block 1737, Lot 49, Borough of Queens.

COMMUNITY BOARD #4Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 21, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, August 22, 2006 and August 23, 2006 as printed in the bulletin of September 1, 2006, Vol. 91, No. 34. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

69-95-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Hudson River Park Trust, owner; Chelsea Piers Management Inc., lessee.

SUBJECT –Application August 31, 2006 – Extension of Term/Amendment/Waiver - Application filed on behalf of the Sports Center at Chelsea Piers to Extend the term of the Special Permit which was granted pursuant to section 73-36 of the zoning resolution to allow the operation of a Physical Cultural Establishment in a M2-3 zoning district and expired on August 8, 2005. The application seeks to amend the resolution to reflect the elimination of the Health Club in the North head house of the Chelsea Piers Sport and Entertainment Complex.

PREMISES AFFECTED – Pier 60, 111B Eleventh Avenue, west side of West Street, between West 19th and West 20th Streets, Block 662, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment, and an extension of the term for a previously granted variance for a Physical Culture Establishment (PCE), which expired on August 8, 2005; and

WHEREAS, a public hearing was held on this application on October 31, 2006 after due notice by publication in *The City Record*, and then to decision on November 21, 2006; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of West Street, between West 19th and West 20th Streets; and

WHEREAS, the PCE, operated as the Sports Center at Chelsea Piers, is located at Pier 60, and is within the Chelsea Piers Sports and Entertainment complex, which includes Piers 59 through 62; and

WHEREAS, Pier 60 is occupied by a two-story with mezzanines building and is located within an M2-3 zoning district; and

WHEREAS, the PCE occupies a portion of the first floor, and the entire second floor and second-floor mezzanine, for a total of 115,960 sq. ft. of floor area in the subject building; and

WHEREAS, the Board notes that the other portions of the sports complex are occupied by uses which do not require the special permit and therefore are not under the Board's jurisdiction; and

WHEREAS, on August 8, 1995, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE in the subject building and in an additional part of the complex, located between Piers 61 and 62, known as the North Headhouse; and

WHEREAS, the term was for ten years; and

WHEREAS, on March 15, 1994, under BSA Cal. No. 87-93-A, the Board granted an appeal to permit a variance of certain provisions of the Building Code relating to fire safety protection in anticipation of the development of the subject piers; and

WHEREAS, the applicant now requests an additional ten-year term and an amendment to the approved plans to reflect the PCE's actual floor area; and

WHEREAS, the applicant represents that, although the approved plans indicate PCE use at Pier 60 (115,960 sq. ft.) and in the North Headhouse (65,821 sq. ft.), the North Headhouse space is now occupied by non-PCE use; and

WHEREAS, the applicant submitted new drawings and floor area calculations reflecting the as-built conditions, and illustrating that the PCE use is confined to Pier 60; and

WHEREAS, based on the above, the Board finds that the requested extension of term and the amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated August 8, 1995, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant and to permit the revision of the approved plans to reflect the elimination of the North Headhouse for PCE use; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received August 31, 2006' – (6) sheets; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years, expiring on August 8, 2015;

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THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 100619957)

Adopted by the Board of Standards and Appeals, November 21, 2006.

574-85-BZ

APPLICANT – Law Office of Fredrick A. Becker for 125 East 39th Street Realty LLC, owner.

SUBJECT – Application September 21, 2006 – Extension of term for a previously granted Variance (72-21) to permit, in a C1-5(R-10) zoning district, an eating and drinking establishment (UG6) located in the cellar, basement and first floor of a five story building.

PREMISES AFFECTED – 125 East 39th Street, Northerly side of East 39th Street, 78' east of Lexington Avenue. Block 895, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for an eating and drinking establishment, which expired on June 17, 2006; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in *The City Record*, and then to closure and decision on November 21, 2006; and

WHEREAS, the subject premises is located on the north side of East 39th Street, 78 feet east of Lexington Avenue; and

WHEREAS, the site is occupied by a five-story with mixed-use commercial and residential building with approximately 7,100 sq. ft. of floor area, located within a C1-

5(R10) zoning district; and

WHEREAS, the eating and drinking establishment occupies a portion of the basement and first floor; and

WHEREAS, on June 17, 1986, the Board granted a variance pursuant to ZR § 72-21, to permit the extension of this eating and drinking establishment into the first floor of the existing building for a ten-year term; and

WHEREAS, on April 15, 1997, the Board granted a ten-year extension of term which expired on June 17, 2006; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant notes that the restaurant operator has changed since the last grant; and

WHEREAS, at hearing, the Board asked the applicant if the sidewalk canopy at the site had the required permit; and

WHEREAS, the applicant responded that the canopy has the required DOB permit; and

WHEREAS, based on the above, the Board finds that a ten-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated June 17, 1986, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the eating and drinking establishment shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received September 21, 2006’–(5) sheets; and *on condition*:

THAT this grant shall be limited to a term of ten years from the expiration of the last grant, expiring June 17, 2016;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 101276138)

Adopted by the Board of Standards and Appeals, November 21, 2006.

363-04-BZ

APPLICANT – Mark A. Levine, Esq., for 6002 Fort Hamilton Parkway Partners, owners.

SUBJECT – Application June 27, 2006 – Amendment to reconfigure internal layout and minor changes to the

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structural façade. The premise is located in an M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, a/k/a 949-959 61st Street, a/k/a 940-966 60th Street, south of 61st Street, east of Fort Hamilton Parkway, Block 5715, Lots 21 & 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Mitchell Korbey.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for the conversion of a former factory to residential and commercial use; and

WHEREAS, a public hearing was held on this application on October 31, 2006 after due notice by publication in *The City Record*, and then to decision on November 21, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the east side of Forth Hamilton Parkway, between 60th Street and 61st Street; and

WHEREAS, the site is occupied by a one- and three-story mostly vacant warehouse/commercial building with approximately 51,474 sq. ft. of floor area, located within an M1-1 zoning district; and

WHEREAS, on July 19, 2005, the Board granted a variance pursuant to ZR § 72-21, to permit the conversion and enlargement of this building to residential and commercial use; and

WHEREAS, the variance permitted 100 dwelling units and first floor commercial space, with accessory parking for residents; and

WHEREAS, the applicant now seeks to modify the BSA-approved plans; and

WHEREAS, the applicant represents that upon the commencement of the project, unforeseen deficiencies in the existing building's structural support system were discovered; and

WHEREAS, the building's steel columns require extensive repair and most of the concrete floor slabs require repair and/or replacement; and

WHEREAS, the applicant now proposes certain modifications to the interior and exterior; and

WHEREAS, specifically, the applicant now proposes to eliminate the proposed mezzanines and the sixth floor, and to reconfigure the dwelling units to provide better access to light and air; and

WHEREAS, the applicant represents that the modified proposal results in a building with the same FAR (2.99) as previously approved, a reduced overall building height (from 50'-3" to 45'-0"), and less lot coverage; and

WHEREAS, the Board notes that the proposed changes resulted in the creation of a unit on the first floor with frontage on the parking lot and under an overhang; and

WHEREAS, at hearing, the Board expressed concern that the dwelling unit would not receive sufficient access to light and air; and

WHEREAS, in response, the applicant reconfigured the commercial and residential space on the first floor so that the noted first-floor dwelling unit would front on Fort Hamilton Parkway; and

WHEREAS, the applicant represents that the proposed modified enlargement does not require any new waivers or modifications to existing waivers; and

WHEREAS, accordingly, the Board finds that the proposed amendments are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 19, 2005, so that as amended this portion of the resolution shall read: "to permit the removal of the proposed mezzanines, the reconfiguration of the dwelling units, commercial space, and parking lot, and other interior and exterior reconfigurations to the approved plans, *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received September 26, 2006'-(8) sheets and 'November 2, 2006'-(1) sheet; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 301799034)

Adopted by the Board of Standards and Appeals, November 21, 2006.

757-89-BZ

APPLICANT – Cozen O'Connor, Barbara Hair, Esq., for 401 Commercial, L.P., owner; Bally Sports Club, Inc., lessee.

SUBJECT – Application October 5, 2006 – Extension of Term and waiver of the rules for a Special Permit (§73-36) to allow a Physical Cultural Establishment in a C6-4.5 zoning

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district within the Midtown Special District.
PREMISES AFFECTED – 401 Seventh Avenue, aka 139 West 32nd Street, Block 808, Lots 7501, 40, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for decision, hearing closed.

17-93-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Lincoln Square Commercial Holding, owner; MP Sports Club Upper Westside LLC on behalf of Reebok-Sports Club/NY, Ltd., lessee.

SUBJECT – Application October 13, 2006 - Extension of term of a previously granted special permit (73-36) for a physical culture establishment (Reebok Sports Club/NY Ltd.) which expired on June 7, 2004; a waiver to file more than a year after the expiration of the term; extension of time to obtain a permanent certificate of occupancy and an amendment for the change in management/ownership and the hours of operation located in a C4-7(L) zoning district.

PREMISES AFFECTED – 160 Columbus Avenue (a/k/a 1992 Broadway), Block 1139, Lots 24, 30, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Paul Selver

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for decision, hearing closed.

139-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for The Mondrian Condominium, owner; Equinox 54th Street, Inc., lessee.

SUBJECT – Application June 30, 2006 - Extension of Term for a Special Permit (§73-36) to allow a Physical Cultural Establishment in a C1-9(TA) zoning district.

PREMISES AFFECTED – 250 East 54th Street, southwest corner of East 54th Street and 2nd Avenue, Block 1327, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Eric Palatnik

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

117-06-A

APPLICANT – Eric Palatnik, P.C., for Esther C. Wallerstein, owner.

SUBJECT – Application June 8, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 1373 East 13th Street, between Avenue N and Elm Avenue, Block 6742, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Angelina Martinez-Rubio, Department of Buildings

ACTION OF THE BOARD – Laid over to December 5, 2006, at 10 A.M., for continued hearing.

166-06-BZY

APPLICANT – Eric Palatnik, P.C., for Mujahid Mian, owner.

SUBJECT – Application July 28, 2006 – Proposed extension of time (§11-331) to complete construction of a minor development for a multi -family building. Prior zoning was R4 zoning district and new zoning is R4-A as of June 29, 2006.

PREMISES AFFECTED – 84-59 162nd Street, south of the corner formed by the intersection of 84th Drive and 162nd Street, Block 9786, Lot 7, Borough of Queens

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik and Zannis Angelidakis.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for continued hearing.

231-06-BZY

APPLICANT – Rothkrug Rothkrug and Spector, for Medhat M. Hanna, owner.

SUBJECT – Application September 11, 2006 –Extension of time to complete construction and obtain a Certificate of Occupancy for a minor development under (11-332) for a single family home. R3-1 zoning district.

PREMISES AFFECTED – 102 Greaves Avenue, intersection of Greaves and Dewey Avenue, Block 4568, lot 40, Borough of Staten Island.

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COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 10:40 A.M.

REGULAR MEETING TUESDAY AFTERNOON, NOVEMBER 21, 2006 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

328-04-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application October 5, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a six story residential building, with twelve dwelling units, Use Group 2, located in an M1-1 zoning district, does not comply with zoning requirements for use, bulk and parking provisions, is contrary to Z.R. §42-00, §43-00 and §44-00.

PREMISES AFFECTED – 110 Franklin Avenue, between Park and Myrtle Avenues, Block 1898, Lots 49 and 50, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 24, 2005, acting on Department of Buildings Application No. 301792503, reads, in pertinent part:

“The proposed residential building located in an M1-1 District is contrary to the use provisions of Section 42-00 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a proposed four-

story with cellar residential building, which does not comply with the applicable zoning requirement concerning permitted use, contrary to ZR § 42-00; and

WHEREAS, the proposed building includes eight units on the ground, second, third and fourth floors, recreation and storage space in the cellar, 11,224.06 sq. ft. of floor area, a Floor Area Ratio (FAR) of 2.4, a street wall and total building height of 40’-4”, a rear yard of 30’-0”, a front yard of 10’-0”, and no side yards or parking spaces (the “Proposed Building”); and

WHEREAS, the Proposed Building will be constructed pursuant to the Quality Housing regulations set forth at Chapter 8, Article II of the ZR; and

WHEREAS, the applicant initially proposed to construct a six story with cellar building, with 12 units, an FAR of 3.0, a total height of 60’-0”, a rear yard of 32’-10”, and a front yard of 20’-0”; and

WHEREAS, the Board expressed concern about this proposal, noting that there did not appear to be any justification for the height and FAR; and

WHEREAS, specifically, the Board noted that the proposed height and bulk would not be compatible with the character of the community, given the heights of the surrounding buildings and the location of the site on a narrow side street; and

WHEREAS, subsequently, the applicant submitted an intermediate proposal, with the following bulk parameters: five stories, ten dwelling units, an FAR of 2.9, a total height of 50’-0”, a rear yard of 31’-5”, and a front yard of 10’-0”; and

WHEREAS, the Board reviewed this intermediate proposal, and again expressed concerns about the compatibility of the height and FAR with the context of the neighborhood; and

WHEREAS, the applicant submitted a second intermediate proposal, with the following bulk parameters: five stories (a partial fifth story set back 15 ft.), ten dwelling units, an FAR of 2.8, a total height of 50’-0”, a rear yard of 30’-0”, and a front yard of 10’-0”; and

WHEREAS, the Board suggested that the fifth floor be removed and that the FAR be reduced to 2.4, with a corresponding reduction in the amount of units; and

WHEREAS, the applicant responded to the Board’s concerns by submitting the current version, as described above, which the Board finds acceptable in terms of impact and compatibility with the surrounding context; and

WHEREAS, a public hearing was held on this application on May 16, 2006 after due notice by publication in the *City Record*, with continued hearings on July 11, 2006, September 12, 2006 and October 17, 2006, and then to decision on November 21, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 3, Brooklyn, declined to make a recommendation upon the subject application; and

WHEREAS, Council Member James recommended disapproval of the original proposal, suggesting that it was out of scale; and

WHEREAS, additionally, certain neighbors appeared in

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opposition to the original proposal, citing concerns about its excessive height and bulk; and

WHEREAS, the subject premises is comprised of two historical tax lots (Lots 49 and 50) proposed to be merged (into Tentative Lot 49), has a total lot area of approximately 4,700 sq. ft., and is located on the west side of Franklin Avenue between Myrtle and Park Avenues; and

WHEREAS, the site has been vacant since 1981, but was previously residentially occupied; and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, the instant variance application for use was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which, when considered in combination, create an unnecessary hardship in developing the site in conformance with the applicable regulations: (1) the site's small size and narrowness; (2) the existence of foundation rubble from the prior residential occupancies; and (3) the adjacency of residential use on both sides of the site; and

WHEREAS, as to the site's size and narrowness, the applicant states that these limitations prevent the site from being able to sustain the floor plates necessary for a viable manufacturing or other conforming use; and

WHEREAS, the Board agrees that the site's small size and its narrowness impose a hardship in developing the site with a conforming use; and

WHEREAS, as to the adjacency of the site to two residential uses, the Board also agrees that such a locational difficulty compounds the hardship associated with the site's small size and narrowness; and

WHEREAS, however, at hearing, the Board asked the applicant to establish that these conditions were reasonably unique to the subject site, and to review an expanded study area that includes the nearby blocks, which are zoned M1-1; and

WHEREAS, in response, the applicant studied an area consisting of the subject block and three blocks to the west, as reflected on the submitted land use maps; and

WHEREAS, the applicant claimed that within this study area, seven lots are occupied by active conforming uses; and

WHEREAS, the applicant's analysis shows that only three of these lots are comparable in size to, or smaller than, the subject site; and

WHEREAS, the study also shows that only one of these lots (with 10,250 sq. ft. of lot area) was developed after 1961; and

WHEREAS, the applicant also notes that the land use maps reflect seven other vacant lots; and

WHEREAS, the applicant argues that these vacant lots are distinguishable from the subject site in terms of size, depth, adjacency to residential uses, or adjacency to other non-residential parcels that could be combined with the lot; and

WHEREAS, the Board agrees that the subject site is the only lot in the underlying M1-1 zoning district that is both vacant and small and narrow, and further burdened by adjacency to two residential uses; and

WHEREAS, as to the existence of foundation rubble on

the site, the Board notes that this is often a typical condition on a vacant site and observes that the applicant made no attempt to distinguish this condition as unique; and

WHEREAS, thus, the Board declines to regard the presence of rubble as either unique or a hardship; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions – namely, the site's shape and narrowness and its adjacency to residential uses - when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable use regulation; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios: (1) a 4,700 sq. ft. one-story industrial building; and (2) an 11,250 sq. ft. multi-story community facility building; and

WHEREAS, the applicant concluded that neither scenario would realize a reasonable return; and

WHEREAS, the applicant also notes that marketing of the site for conforming uses did not lead to any significant interest; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as an initial matter, the Board notes that none of the above-mentioned earlier iterations would have been contextual with the surrounding neighborhood, which is characterized by three and four-story residential buildings adjacent to the site, and three to four-story residential buildings in the immediate area; and

WHEREAS, the Board notes that the proposal has been significantly reduced in terms of FAR and height, which makes it much more compatible with the surrounding context; and

WHEREAS, as to the proposed use, the applicant notes that the majority of the lots with frontage on Franklin Avenue – including the two adjacent sites – are occupied by residential uses, and that the introduction of eight additional residential units within this context will not alter the essential character of the neighborhood; and

WHEREAS, the Board agrees that the predominant character of the neighborhood is residential, notwithstanding the underlying M1-1 zoning district; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a

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function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed a six-story, 3.0 FAR building with 12 units; and

WHEREAS, after this and subsequent intermediate iterations were rejected, the applicant proposed the current version of the building, which the Board finds acceptable; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA048K, dated April 26, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: the April 26, 2005 EAS and the March 2005 Phase II Workplan and Health and Safety Plan; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed and submitted for proof of recording on October 25, 2006 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City

Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, a proposed four story with cellar residential building, which does not comply with applicable the zoning requirement concerning use, contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 8, 2006" - (4) sheets and "Received November 20, 2006" - (1) sheet; and *on further condition*:

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the following are the bulk parameters of the building: four stories, 11,224.06 sq. ft. of floor area, an FAR of 2.4, a total height of 40'-4", a rear yard of 30'-0", a front yard of 10'-0", and no side yards or parking spaces (as indicated on the BSA-approved plans);

THAT all Quality Housing regulations, including deductions, shall be complied with, as reviewed and approved by the Department of Buildings;

THAT DOB shall ensure that the two existing tax lots (Lots 49 and 50) are affirmatively merged prior to the issuance of any building permit;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 21, 2006.

298-05-BZ

APPLICANT – Rampulla Associates Architects, for Pasquale Pappalardo, owner.

SUBJECT – Application October 4, 2005 – Variance pursuant to Z.R. Section 72-21 to construct a new two-story office building (Use Group 6) with accessory parking for 39

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cars. The premises is located in an R3X zoning district. The site is currently vacant and contains an abandoned greenhouse building from when the site was used as a garden center. The proposal is contrary to the district use regulations pursuant to Z.R. Section 22-00.

PREMISES AFFECTED – 1390 Richmond Avenue, bound by Richmond Avenue, Lamberts Lane and Globe Avenue, Block 1612, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated September 20, 2005, acting on Department of Buildings Application No. 500794349, reads in pertinent part:

“Proposed basement and two story commercial building within an R3X zoning district is not permitted as of right and is contrary to ZR Section 22-00.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3X zoning district, a proposed two-story commercial office building (Use Group 6) with two levels of accessory parking for 36 cars, which does not comply with applicable zoning requirements concerning use, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on July 25, 2006 after due notice by publication in the *City Record*, with a continued hearing on October 31, 2006, and then to decision on November 21, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 2, Staten Island, recommends approval of the application on condition that no left turns be permitted into the parking lot from Lamberts Lane and that the curb cut on Globe Avenue be moved 50 feet towards Lamberts Lane; and

WHEREAS, the Borough President recommended disapproval of this application, citing concerns about the potential for increased traffic at the intersection of Richmond Avenue and Lamberts Lane and about the potential disruption of neighborhood character along Globe Avenue; and

WHEREAS, the City’s Fire Department (FDNY) requested a deferral of the decision on this application and requested additional time in order to further consider purchasing the property for potential future FDNY use with the adjacent firehouse on Richmond Avenue; and

WHEREAS, at the October 31 hearing, Battalion Chief Richard A. Posavetz, representing Staten Island Borough Command, expressed a concern that the proposed commercial development would interfere with emergency vehicle response

time; and

WHEREAS, however, the Board was not presented with any compelling evidence in support of this claim; and

WHEREAS, further, FDNY failed to indicate to the Board that it was in fact proceeding with a purchase of the property; and

WHEREAS, the subject premises has a total lot area of 12,419.14 sq. ft., and is situated on a triangular lot formed by Richmond Avenue, Lamberts Lane, and Globe Avenue, with approximately 31.31 ft. of frontage on Richmond Avenue, 193.99 ft. of frontage on Lamberts Lane, and 109.99 ft. of frontage on Globe Avenue; and

WHEREAS, the site is improved upon with a metal storage shed, which will be removed; and

WHEREAS, the proposed building will be occupied by office space on the first and second floors, 18 parking spaces on the lower parking level (partially below grade) and 18 spaces on the upper parking level (at grade and above) (the “Proposed Building”); and

WHEREAS, the Proposed Building will have entrances on Richmond Avenue and Lamberts Lane, and a single curb cut on Globe Avenue will provide access to the parking structure; and

WHEREAS, the Proposed Building will comply with all the bulk regulations for the R3X zoning district; and

WHEREAS, specifically, the Proposed Building will have 3,034.9 sq. ft. of floor area on the first floor and 2,978 sq. ft. of floor area on the second floor for a total floor area of 6,012 sq. ft. (0.48 FAR) (6,209 sq. ft. and 0.50 FAR are the maximum permitted for residential development in the subject zoning district); and

WHEREAS, additionally, the proposed street wall height is 24’-5” (26’-0” is the maximum permitted) and the total building height is 29’-0” (35’-0” is the maximum permitted); and

WHEREAS, because the Proposed Building is non-conforming as to use, the instant variance application was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which, when considered in combination, create an unnecessary hardship in developing the site in conformance with the applicable regulation: (1) the frontage on a main arterial (Richmond Avenue) and a service road for the Staten Island Expressway (Lamberts Lane), (2) the adjacency of the site to commercial districts, (3) the site’s irregular shape and (4) the site’s slope; and

WHEREAS, as to the location of the site, the applicant states that the site has frontage on Richmond Avenue, a four-lane main arterial; and

WHEREAS, additionally, the applicant states that Lamberts Lane is considered a service road of the SIE; and

WHEREAS, the applicant notes that to the west of the site there is an on- and off-ramp to the SIE; vehicles traveling east on the SIE that exit at Richmond Avenue enter onto Lamberts Lane and pass the site; and

WHEREAS, the applicant represents that the site’s direct frontage on Richmond Avenue and Lamberts Lane creates a

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practical difficulty in constructing residential development, in that the proximity diminishes residential sell out value; and

WHEREAS, as to the adjacency to commercial zoning districts, the applicant states there is a C2-1 zoning district across from the site, which includes a shopping center and a hotel; and

WHEREAS, there is also a C2-1 zoning district on the next block and a C1-1 zoning district directly to the south, with many retail and commercial office uses; and

WHEREAS, the applicant also asserts that the siren, horn, and other sounds associated with the adjacent firehouse further compromise the viability of residential use; and

WHEREAS, as to the site's shape, the applicant states that it is predominantly triangular in shape with a small fourth side located at the Richmond Avenue frontage; and

WHEREAS, the applicant states that this unusual lot configuration leads to difficulties in developing the site residentially; specifically, the applicant states that the narrow 31.31 ft. frontage on Richmond Avenue parallel to the much deeper Globe Avenue frontage of 109.99 feet compromises the viability of residential development; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which shows that there are not any other irregularly shaped sites within the area with as large of a disparity in depth at different points of the lot; and

WHEREAS, as to the lot's shape, the Board notes that it compromises the various conforming development scenarios studied by the applicant; and

WHEREAS, specifically, the Board notes that since a significant portion of the site is oriented towards Lamberts Lane, that scenario contemplating three single-family homes requires their orientation towards Lamberts Lane, which is less conducive to residential development; and

WHEREAS, the Board also notes that an alternative conforming scenario would result in one home would be oriented towards Lamberts Lane, one towards Lamberts Lane and Richmond Avenue, and only one towards the residential Globe Avenue, which is also less conducive to residential development; and

WHEREAS, the Board finds that the three above-mentioned conditions are unique to the site and impose a hardship in developing it with a conforming use; and

WHEREAS, as to the slope of the lot, the applicant notes that the slope affecting the site leads to increased construction costs; and

WHEREAS, however, the Board does not find that the slope is significant enough to add considerable development costs, since it is only approximately five percent across the site; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions – namely, the site's location on the SIE service road and a main arterial within a busy commercial corridor, its adjacency to commercial zoning districts, and its shape - when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the

applicable zoning regulation; and

WHEREAS, the applicant submitted a feasibility study analyzing the following conforming scenarios: (1) three single-family detached homes – one each with frontage on Richmond Avenue, Lamberts Lane, and Globe Avenue; (2) three single-family detached homes – one with frontage on Richmond Avenue and two with frontage on Globe Avenue; (3) two single-family homes; and (4) a community facility; and

WHEREAS, the applicant concluded that none of the conforming scenarios would realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to use, the applicant has proposed a number of measures to lessen the impact of a commercial building and parking structure on the residential uses along Globe Avenue; and

WHEREAS, specifically, the applicant proposes to screen the parking structure with decorative metal fencing and densely planted shrubbery so as to lessen any visual impact on adjacent residences; and

WHEREAS, the applicant also revised the plans to provide for a 4 ft. planting strip along the length of the building on the Globe Avenue frontage; and

WHEREAS, further, the applicant proposes to direct any lighting away from residences and to provide a four ft. high opaque fence along the portion of the parking structure that abuts residential uses; and

WHEREAS, additionally, the hours of operation of the building and parking lot will be confined to 7 a.m. to 7 p.m., Monday through Friday and 9 a.m. to 5 p.m., Saturday and Sunday; and

WHEREAS, the Board also notes that the site is proximate to commercial zoning districts and commercial uses; and

WHEREAS, as to bulk, the applicant notes that the parking structure occupies the sloped portion of the site; because the grade is higher on the Globe Avenue side than on the Lamberts Lane side, the lower level of the parking lot on Globe Avenue will be predominantly below grade; and

WHEREAS, further, because of the slope, the massing of the parking structure on the residential street is minimized; and

WHEREAS, the Board also observes that the height and FAR comply with R3X district parameters; and

WHEREAS, as to traffic, the Board notes that the applicant initially proposed to provide curb cuts and access to the parking structure from both Lamberts Lane and Globe Avenue; and

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WHEREAS, the applicant had concluded that there would be less impact to the residences on Globe Avenue if there was also ingress and egress on Lamberts Avenue; and

WHEREAS, in response to the Community Board's concern about adding to the traffic on Lamberts Lane, the applicant revised the plans to reflect the elimination of the curb cut on Lamberts Lane; and

WHEREAS, the applicant also relocated the curb cut on Globe Avenue towards Lamberts Lane while maintaining the required 50 ft. from the intersection; and

WHEREAS, the applicant also provided a traffic study which compared the Proposed Building (0.48 FAR) with two as of right community facility buildings (1.0 FAR) and determined that the net difference in trips is approximately 15 trips during peak periods; and

WHEREAS, as to the amount of parking provided, the applicant states that only 20 spaces are required, but that 36 will accommodate demand better and lessen the likelihood of back-ups onto Globe Avenue; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed to have a 39-space parking structure with an additional curb cut on Lamberts Lane; and

WHEREAS, the applicant subsequently submitted revised plans showing the elimination of this curb cut to help minimize the traffic impact on nearby residents; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA021R, dated July 10, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public

Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the proposed action is located within the City's Waterfront Revitalization Program (WRP) boundaries and is consistent with the policies and provisions of the WRP; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance on a site within an R3X zoning district, a proposed two-story commercial office building (Use Group 6) with two levels of accessory parking for 36 cars, which does not comply with applicable zoning requirements concerning use, contrary to ZR § 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 21, 2006" - (8) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: two stories, a floor area of 6,012.9 sq. ft.; an FAR of 0.48; a perimeter wall height of 24'-5", and a total building height of 29'-0", as indicated on the BSA-approved plans);

THAT a maximum of 36 accessory parking spaces shall be provided, with the layout to be approved by DOB;

THAT all lighting shall be directed downward and away from adjacent residences;

THAT the hours of operation for the parking lot shall be limited to 7 a.m. to 7 p.m., Monday through Friday and 9 a.m. to 5 p.m., Saturday and Sunday;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 21, 2006.

234-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Martin Gross and Batsheva Gross, owners.

SUBJECT – Application September 11, 2006 – Pursuant to

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ZR 73-622 for the enlargement of single family residence. This application seeks to vary ZR 23-141(a) for open space and floor area, ZR 23-47 for less than the minimum rear yard and ZR 23-461 for less than the minimum side yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1085 East 22nd Street, east side, between Avenue J and K, Block 7604, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 11, 2006, acting on Department of Buildings Application No. 302205290, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space ratio of 150.
3. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30'-0".
4. Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required side yard of 5'-0".; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio (FAR), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in *The City Record*, and then to decision on November 21, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the east side of East 22nd Street, between Avenue J and Avenue K; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 3,080.56 sq. ft. (0.77 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is

available; and

WHEREAS, the applicant seeks an increase in the floor area from 3,080.56 sq. ft. (0.77 FAR) to 3,957.32 sq. ft. (.99 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to reduce the open space ratio from 85 percent to 58.4 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to increase the existing non-complying side yard of 1'-11" to 4'-0" and reduce the complying side yard to 9'-0" (side yards of 13'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, the applicant proposes to provide a rear yard of 20'-0" (30'-0" is the minimum required); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the wall height and total height comply with applicable R2 district regulations; and

WHEREAS, initially, the applicant proposed to maintain the existing non-complying 1'-11" side yard while reducing the complying side yard from 11'-6" to 9'-0"; and

WHEREAS, at hearing, the Board expressed concern that the total width of the side yards did not meet the required 13 feet; and

WHEREAS, the applicant subsequently revised the plans to reflect the removal of the one-story portion of the house which projected into the smaller side yard; the revised plans provide for side yards totaling 13 feet; and

WHEREAS, further, the Board asked the applicant if the remaining foundation walls would actually serve to support the building; and

WHEREAS, the applicant responded that the remaining foundation walls will continue to serve as foundation walls and provide structural support to the enlarged home; and

WHEREAS, the Board also asked the applicant to identify which portions of the attic have a ceiling height of between five and eight feet and are therefore counted as floor area; and

WHEREAS, the applicant submitted revised plans indicating which portions of the attic have a ceiling height of between five and eight feet and noting that the attic floor area would be as approved by DOB; and

WHEREAS, finally, the Board directed the applicant to remove the garage from the proposed plans and to note that any garage would be as approved by DOB; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit in the subject zoning district; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio (FAR), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "November 8, 2006"-(11) sheets and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall contain a maximum of 644.86 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the parameters of the building: a total floor area of 3,957.32 sq. ft. (0.99 FAR), a wall height of 22'-10", a total height of 36'-10", a front yard of 15'-0", one side yard of 4'-0", one side yard of 9'-0", a rear yard of 20'-0", and an open space ratio of 58.4 percent, all as illustrated on the BSA-approved plans;

THAT the garage shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 21, 2006.

235-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Susan Rosenberg, owner.

SUBJECT – Application September 11, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family residence. This application seeks to vary ZR 23-141 for open space and floor area and ZR 23-47 for less than the minimum rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 3155 Bedford Avenue, east side of Bedford Avenue, between Avenue J and Avenue K, Block 7607, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 11, 2006, acting on Department of Buildings Application No. 302205307, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space ratio of 150.
3. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30'-0".;

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio (FAR), open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in *The City Record*, and then to decision on November 21, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the east side of Bedford Avenue, between Avenue J and Avenue K; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 1,980.30 sq. ft. (0.50 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

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WHEREAS, the applicant seeks an increase in the floor area from 1,980.30 sq. ft. (0.50 FAR) to 3,983.97 sq. ft. (1.0 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to reduce the open space ratio from 147 percent to 58.1 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a rear yard of 20'-0" (30'-0" is the minimum required); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the wall height and total height comply with applicable R2 district regulations; and

WHEREAS, at hearing, the Board asked the applicant if the remaining foundation walls would actually serve to support the building; and

WHEREAS, the applicant responded that the remaining foundation walls will continue to serve as foundation walls and provide structural support to the enlarged home; and

WHEREAS, the Board also asked the applicant to identify which portions of the attic have a ceiling height of between five and eight feet and are therefore counted as floor area; and

WHEREAS, the applicant submitted revised plans indicating which portions of the attic have a ceiling height of between five and eight feet and noting that the attic floor area would be as approved by DOB; and

WHEREAS, further, the Board directed the applicant to remove the garage from the proposed plans and to note that any garage would be as approved by DOB; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit in the subject zoning district; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required

findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio (FAR), open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "November 8, 2006"-(12) sheets and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall contain a maximum of 579 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the parameters of the building: a total floor area of 3983.97 sq. ft. (1.0 FAR), a wall height of 21'-10", a total height of 35'-4", a front yard of 15'-0", one side yard of 5'-0", one side yard of 8'-4", a rear yard of 20'-0", and an open space ratio of 58.1 percent, all as illustrated on the BSA-approved plans;

THAT the garage shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 21, 2006.

175-05-BZ

APPLICANT – Eric Palatnik, P.C. for 18-24 Luquer Street Realty LLC, owner.

SUBJECT – Application July 28, 2005 – Zoning variance pursuant to Z.R. §72-21 to allow the construction of a proposed four (4) story multi-family dwelling containing sixteen (16) dwelling units and eight (8) accessory parking spaces. Project site is located in an M1-1 zoning district and is contrary to Z.R. §42-00.

PREMISES AFFECTED – 18-24 Luquer Street, Between Hicks Street and Columbia Street, Block 520, Lot 13,16, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

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ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for decision, hearing closed.

290-05-BZ

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated April 19, 2006 – Variance pursuant to Z.R. §72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 & 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95’ east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Joel Steinberg.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown.....3

Negative:.....0

Abstain: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for decision, hearing closed.

60-06-A

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application April 5, 2006 – Request pursuant to Section 666 of the New York City Charter for a reversal of DOB’s denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95’ east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Joel Steinberg.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown.....3

Negative:.....0

Abstain: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for decision, hearing closed.

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino,

owner.

SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking. Parking for 12 vehicles in the cellar is proposed. The existing one-story structure consisting of approximately 2,600 SF will be demolished.

PREMISES AFFECTED – 2041 Flatbush Avenue, at the intersection of Flatbush Avenue and the eastern side of Baughman Place. Block 7868, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for continued hearing.

51-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Rivoli Realty Corp., owner.

SUBJECT – Application March 31, 2006 – Variance under Z.R (§72-21) on a lot consisting of 20,100 SF, and improved with a 13,384 SF one-story commercial structure, in a C1-2/R2 district, permission sought to legalize dance studio and to permit the operation of a physical culture establishment in a portion of the cellar. No parking provided on the premises. Sections: 32-18 dance studio (UG 9); and 32-00 PCE.

PREMISES AFFECTED – 188-02/22 Union Turnpike, south side of Union Turnpike of 188th and 189th Streets, Block 7266, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel and Robert Pauls

For Administration: Anthony Scaduto, Fire Department..

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for decision, hearing closed.

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. 42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

MINUTES

COMMUNITY BOARD #2M

APPEARANCES –

Jay Segal, Harry Kendall, Joan Krevlin, Doris Diether and Caroline Harris.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for continued hearing.

75-06-BZ

APPLICANT– Joseph P. Morsellino, Esq., for Cord Meyer Development, owner.

SUBJECT – Application April 25, 2006 – Zoning variance pursuant to § 72-21 to allow a proposed twenty-one (21) story residential building with ground floor retail and community facility uses to violate applicable FAR (§ 23-142 and § 35-22), open space ratio (§ 23-142, § 35-22, and § 35-33) and sky exposure plane (§ 23-632) regulations. The proposed building would include 136 dwelling units and 146 parking spaces. The project site is located within an R7-1/C1-2 zoning district.

PREMISES AFFECTED – 108-20 71st Avenue, northeast corner of Queens Boulevard and 71st Avenue, Block 2224, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

Joseph P. Morsellino, Peter Galletta, Joseph C. Hennessy. For Administration: T. Rogers, Abraham B. Krieger, C. Louis Putallaz, Lane Steinberg, Allan Steinberg, Lori Mark, Walter Lauchheimer, and Margot Lauchheimer.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for continued hearing.

82-06-BZ

APPLICANT– Eric Palatnik, P.C., for Utopia Associates, owner; Yum Brands, Inc., lessee.

SUBJECT – Application May 2, 2006 – pursuant to Z.R. §72-21 to request a variance to permit the re-development of an existing non-conforming eating and drinking establishment (Use Group 6) with an accessory drive-thru located in an R3-2 zoning district and contrary to Z.R. Section 22-00. The existing accessory drive-thru was authorized through a prior BSA approval (168-92-BZ). The proposal would create a new eating and drinking establishment (Use Group 6) with accessory drive-thru.

PREMISES AFFECTED – 172-12 Northern Boulevard, between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Eric Palatnik, Eugene T. Ketly and Robert Pauls.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for continued hearing.

83-06-BZ

APPLICANT– Eric Palatnik, P.C., for Simon Blitz, owner.

SUBJECT – Application May 2, 2006 – Variance (§72-21) to allow the conversion and two (2) story enlargement of an existing four story industrial building. The proposed multi-family building will contain six (6) floors, ground floor retail use, and fourteen (14) dwelling units. No parking spaces are proposed. The proposal would exceed the maximum floor area ratio (123-64 (a)) and applicable height and setback requirements (123-662). The project site is located within the Hunters Point Subdistrict of the Special Long Island City Mixed Use District and is zoned M1-4/R6A (LIC).

PREMISES AFFECTED – 47-33 Fifth Street, north side of 5th Street, between 48th Avenue and 47th Road, Block 30, Lo 26, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik and Gita Nandan.

For Opposition: Gary S, S.

ACTION OF THE BOARD – Laid over to January 30, 2007, at 1:30 P.M., for continued hearing.

104-06-BZ

APPLICANT– Eric Palatnik, P.C., for Martin Menashe, owner.

SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to partially legalize and partially alter a long standing enlargement to an existing single family residence which is contrary to ZR 23-141 for floor area and open space and ZR 23-46 for side yard requirement. The premise is located in an R-2 zoning district. This current application filing has a previous BSA Ca. #802-87-BZ.

PREMISES AFFECTED – 3584 Bedford Avenue, north of Avenue “O”, Block 7678, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

121-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum, Inc., owner.

SUBJECT – Application June 12, 2006 – Application filed pursuant to sections 11-411 & 11-12 of the zoning resolution to request the re-establishment of the previously granted variance permitting the operation of an automotive service station in a R7-1 zoning district and to legalize certain minor amendments made to the previously approved plans.

PREMISES AFFECTED – 495 East 180th Street, northwest corner of the intersection formed between 180th Street and Bathgate Avenue, Block 3047, Lot 21, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

MINUTES

Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for decision, hearing closed.

140-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 21-29 Belvidere Realty, LLC, owner.

SUBJECT –Application July 6, 2006 - Special Permit pursuant to Z.R. §73-53 to allow the proposed four-story enlargement of a legal and existing, conforming four-story manufacturing building. The premise is located in an M1-1 zoning district. The proposal is seeking waivers of Z. R. Sections 43-12 (FAR); 43-43 (Wall height, total height, number of stories, setbacks, and sky exposure plane); and 43-26 (Rear yard).

PREMISES AFFECTED – 25-29 Belvidere Street, located on the east side of Belvidere Street between Broadway and Beaver Street, Block 3135, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Richard Lobel and Ronnie Franks.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for decision, hearing closed.

141-06-BZ

APPLICANT– Eric Palatnik, P.C., for Congregation Tehilo Ledovid, owner.

SUBJECT – Application July 6, 2006 - Variance pursuant to Section 72-21 to permit the proposed three-story synagogue. The Premise is located in an R5 zoning district. The proposal includes waivers relating to floor area and lot coverage (24-11); front yards (Z.R. 24-34); side yard (24-35); wall height and sky exposure plane (24-521); and parking (25-31).

PREMISES AFFECTED – 2084 60th Street, southwest corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik, Martin Katz, Mayer Weinberger.

For Opposition: Leo Weinberger, Esq.; Sal Cali, Vito Pictanza, William Finn and Rebecca Grey.

ACTION OF THE BOARD – Laid over to January 9, 2006, at 1:30 P.M., for continued hearing.

181-06-BZ

APPLICANT – Greenberg Trarurig, LLP, by Jay Segal/Deirdre Carson, for 471 Washington Street Partners, owners.

SUBJECT – Application August 21, 2006 - Zoning variance

pursuant to (§72-21) to allow a nine (9) story residential building containing seven (7) dwelling units and ground floor retail use in an M1-5 district (Area B-2 of the Special Tribeca Mixed Use District). The proposal is contrary to use regulations (§ 42-10 and § 111-104(d)).

PREMISES AFFECTED – 471 Washington Street (aka 510-520 Canal Street), Block 595, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Segal, Peter Moore, Jane Heimsohn.

For Opposition: Sarah Schmidt.

ACTION OF THE BOARD – Laid over to January 9, 2006, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 4:20 P.M.

BULLETIN

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AND APPEALS

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Volume 91, Nos. 46-48

December 15, 2006

DIRECTORY

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SUSAN M. HINKSON

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Tuesday, December 5, 2006**

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307-06-A

86-18 58 Avenue, Premises are situated on the east side of 58th Avenue 160 feet north of the corner formed by the intersection of Van Horn Street and 58 Avenue, Block 2872, Lot(s) 15 Borough of **Queens, Community Board: 4.** Appeal-Of the denial of lifting the vacated order at the premises by DOB Queens and Commissioner Derek Lee.

308-06-BZ

1458-1460 East 26th Street, Between Avenue N and Avenue O., Block 7679, Lot(s) 77 & 78 Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT)-73-622-To enlarge a single family residence.

309-06-BZ

2817 Avenue M, Avenue M between East 28th Street and East 29th Street, Block 7646, Lot(s) 3 Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT)-73-622-To allow the enlargement of a single family residence.

310-06-A

67 Liberty Street, North side of Liberty Street between Broadway and Liberty Place., Block 64, Lot(s) 10 Borough of **Manhattan, Community Board: 1.** Appeal-Reverse a decision on application and plans for the conversion residential and enlarge an existing five-story building to nineteen stories.

311-06-BZ

300 Columbia Street, Northwest corner of Columbia Street and Woodhull Street, Block 357, Lot(s) 38 Borough of **Brooklyn, Community Board: 6.** Under 72-21-To permit the construction of three-2-unit dwellings, on a vacant zoning lot.

312-06-BZ

302 Columbia Street, Northwest corner of Columbia Street and Woodhull Street, Block 357, Lot(s) 39 Borough of **Brooklyn, Community Board: 6.** Under 72-21-To permit the construction of three 2-unit dwellings, on a vacant zoning lot.

313-06-BZ

304 Columbia Street, Northwest corner of Columbia Street and Woodhull Street., Block 357, Lot(s) 40 Borough of **Brooklyn, Community Board: 6.** Under 72-21-To permit the construction of three 2 unit dwellings, on a vacant lot.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JANUARY 9, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 9, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

733-56-BZ

APPLICANT – Cozen O'Connor Attorneys, for S & B Bronx Realty Associates, owner.
SUBJECT – Application October 26, 2006 – Extension of Term and a waiver of the rules to a previously granted variance to allow a parking lot (UG8) in an R7-1 residential zoning district which expired on December 6, 1997.
PREMISES AFFECTED – 283 East 164th Street, northwest corner of East 164th Street, and College Avenue, Block 2432, Lot 19, Borough of The Bronx.
COMMUNITY BOARD #4BX

230-98-BZ

APPLICANT – Agusta & Ross, for John and Gaetano Iacono, owners.
SUBJECT – Application October 16, 2006 – Extension of Time to obtain a Certificate of Occupancy which expired on April 30, 2003 for an automotive repair shop and the sale of used cars (2) in an R5 zoning district.
PREMISES AFFECTED – 5810-5824 Bay Parkway, northeasterly corner of Bay Parkway and 59th Street, Block 5508, Lot 44, Borough of Brooklyn.
COMMUNITY BOARD #12BK

244-01-BZ

APPLICANT– Sheldon Lobel, P.C., for Gregory Pasternak, owner.
SUBJECT – Application October 24, 2006 – Extension of Time to complete construction which expired on September 24, 2006 for the legalization of residential units in an existing building located in an M1-2/R6A zoning district.
PREMISES AFFECTED – 325 South 1st Street, a/k/a 398/404 Rodney Street, northeast corner of intersection formed by Rodney Street and South First Street, Block 2398, Lot 28, Borough of Brooklyn.
COMMUNITY BOARD #1BK

300-05-A

APPLICANT – Zygmunt Staszewski, P.E., for Breezy Point Cooperative, Inc., owner; Ed Keisel, lessee.
SUBJECT – Application July 6, 2006 – Reconstruct and enlarge an existing one family dwelling which lies within the bed of a mapped street (B209th Street) contrary to Section 35 of the General City Law. R4 Zoning District.

PREMISES AFFECTED – 995 Bayside, east of Bayside, north of West Market Street, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEALS CALENDAR

239-06-A

APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Inc., owner; Hugh Ferguson, lessee.
SUBJECT – Application September 13, 2006 – Reconstruction and enlargement of an existing one-family dwelling not fronting a mapped street, contrary to Article 3, Section 36 of the General City Law. R4 zoning district.
PREMISES AFFECTED – 8 Suffolk Walk, west side 110.3' south of Oceanside Avenue, Block 16350, Lots p/o 400, Borough of Queens.
COMMUNITY BOARD #14Q

255-06-A thru 257-06-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bell Building Corp., owner.
SUBJECT – Application September 19, 2006 – Application to permit the construction of a one family dwelling not fronting on mapped street, contrary to General City Law Section 36. R3A zoning district.
PREMISES AFFECTED – 76, 74, 72 Bell Street (a/k/a Wall Street) east side of Bell Street, south of intersection with Fletcher Street, Block 2987, Lots 20, 21, 22, Borough of Staten Island.
COMMUNITY BOARD #1SI

277-06-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Dennis & Judy Dunne, owners.
SUBJECT – Application October 16, 2006 – Reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law and the upgrade of an existing disposal system in the bed of a private service road contrary to Department of Buildings Policy. R4 zoning district.
PREMISES AFFECTED – 27 Roosevelt Walk, east side Roosevelt Walk 193.04' south of West End Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

CALENDAR

JANUARY 9, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 9, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

87-05-BZ

APPLICANT – Eric Palatnik, P.C., for Tri-Boro Properties, LLC, owner.

SUBJECT – Application April 8, 2005 – Zoning Variance under (§72-21) to allow a four (4) story residential building containing seventeen (17) dwelling units in an M1-1D district. Proposal is contrary to use regulations (§42-10).

PREMISES AFFECTED – 216 26th Street, between Fourth and Fifth Avenues, Block 658, Lot 13, Borough of Brooklyn
COMMUNITY BOARD #7BK

330-05-BZ

APPLICANT– Vito J. Fossella, P.E., for Frank Bennett, owner.

SUBJECT – Application November 16, 2005 – Special permit (§73-36). In a C2-2/R3-2 district, on a lot consisting of 5,670 SF, and improved with two one-story commercial buildings, permission sought to allow a physical culture establishment in the cellar of one existing building in 350 New Dorp Lane and in the enlarged cellar of an existing adjacent retail building at 346 New Dorp Lane.

PREMISES AFFECTED – 350 New Dorp Lane, Block 4221, Lot 53, Borough of Staten Island.

COMMUNITY BOARD #2SI

79-06-BZ

APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.

SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building on a vacant site located in an M1-1 zoning district. The proposal is contrary to Section 42-00.

PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246' east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPLICANT – Law Office of Fredrick A. Becker, for Breindi Amsterdam and Eli Amsterdam, owners.

SUBJECT – Application September 26, 2006 – Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area 23-141(a) in an R2 zoning district.

PREMISES AFFECTED – 2801-2805 Avenue L (a/k/a 1185-1195 East 28th Street) northeast corner of the intersection of East 28th Street and Avenue L, Block 7628, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

267-06-BZ

APPLICANT– Stadtmauer Bailkin, LLP, for Philip Zerillo and Peter Zuccarello, owners.

SUBJECT – Application September 29, 2006 – Variance (§72-21). On a lot consisting of 5,902 SF, and located in an R2 district, permission sought to construct a two-story plus cellar commercial building. The structure will contain 3,431 SF (FAR .58), and will have five accessory parking spaces. The uses therein will be UG6 professional offices. Currently the site is improved with a 1,507 SF two-story, one-family vacant residential structure with a detached garage.

DOB Objection: Sections 22-00: Proposed use is contrary to district use regulations.

PREMISES AFFECTED – 148-29 Cross Island Parkway, Block 4486, Lots 34, 35, Borough of Queens.

COMMUNITY BOARD #7Q

274-06-BZ

APPLICANT– Stadtmauer Bailkin, LLP, for Rockaway Homes, Inc., owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) for the construction of a two-story one family residence on a vacant lot which seeks to vary the required front yards (23-45) and minimum lot width (23-32) in an R3-2 zoning district.

PREMISES AFFECTED – 116-07 132nd Street, vacant triangular lot with Lincoln Street to the east 132nd Street to the west and 116th Avenue to the north, Block 11688, Lot 1, Borough of Queens.

COMMUNITY BOARD #10Q

Jeff Mulligan, Executive Director

263-06-BZ

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 5, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, September 19, 2006 as printed in the bulletin of September 28, 2006, Vol. 91, No. 37. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

181-38-BZ

APPLICANT – Michael Cosentino, for Michael Innella, owner.

SUBJECT – Application June 28, 2006 – Pursuant to ZR §11-411 for an extension of term to a gasoline service station (Sunoco) for a ten year term which expired on June 3, 2005, and Amendment to convert the existing service repair bays to a convenience store and a waiver to file the application more than 30 days after the expiration of term. The premise is located in an R-3A(CD) zoning district.

PREMISES AFFECTED – 410-412 City Island Avenue, corner of Ditmars Street, Block 5645, Lot 6, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to the approved plans, and an extension of term for a previously granted variance for a gasoline service station, which expired on June 3, 2005; and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in *The City Record*, with continued hearings on November 14, 2006 and then to decision on December 5, 2006; and

WHEREAS, Community Board, 10, Bronx, recommends approval of this application on condition that there be landscaping with flowering plants, decorative fencing, less intense lighting during the hours of midnight to 5 a.m., and enhanced security; and

WHEREAS, the site is located on the northeast corner of City Island Avenue and Ditmars Street; and

WHEREAS, the site is located in an R3A zoning district within the Special City Island District and is improved upon

with a gasoline service station with automotive repairs and a small sales area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 24, 1938 when, under the subject calendar number, the Board granted a variance for the alteration of an existing gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on November 21, 1995, the grant was extended for a term of ten years from the expiration of the prior grant; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, additionally, the applicant proposes to convert the portion of the building occupied by the carwash, lubricatorium, automotive repair shop, and storage space to a convenience store; and

WHEREAS, the applicant also proposes to upgrade the restroom facilities and add storage space; and

WHEREAS, in response to the Community Board's request, the applicant modified the plans to reflect the noted landscaping, decorative fencing, and lighting conditions; and

WHEREAS, the plans also reflect that two security cameras will be installed outside the building; and

WHEREAS, at hearing, the Board asked the applicant about the storage sheds located onsite; and

WHEREAS, the applicant responded that the storage sheds would be removed and their removal is reflected on the revised plans; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendment to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on May 24, 1938, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from June 3, 2005 to expire on June 3, 2015, and to legalize the conversion of a portion of the building to an accessory convenience store *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 27, 2006' –(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 3, 2015;

THAT the exterior lighting shall be dimmed to half the daytime illumination between the hours of 12 a.m. and 5 a.m.;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT landscaping shall be planted and maintained as per the approved plans;

MINUTES

THAT fencing shall be installed and maintained as per the approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 201049659)

Adopted by the Board of Standards and Appeals, December 5, 2006.

938-82-BZ

APPLICANT – Eric Palatnik, P.C., for A. Brothers Realty, Inc., owner; Eugene Khavenson, lessee.

SUBJECT – Application August 4, 2006 – to re-open the previous BSA resolution granted on May 17, 1983 to extend the term of the variance for twenty (20) years. The application also seeks a waiver of the BSA Rules of Practice and Procedure as the subject renewal request is beyond the permitted filing period. Prior grant allowed a one-story commercial office building (UG 6) in an R4 district; contrary to ZR §22-10.

PREMISES AFFECTED – 2470 East 16th Street, northwest corner of Avenue Y, block 7417, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a one-story commercial office building, which expired on May 17, 2003; and

WHEREAS, a public hearing was held on this application on October 17, 2006 after due notice by publication in the *City Record*, and then to decision on December 5, 2006; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of East 16th Street and Avenue Y; and

WHEREAS, the site is located within an R4 zoning district and is improved upon with a one-story commercial office building with accessory parking for seven vehicles; and

WHEREAS, on May 17, 1983, the Board granted an application to permit the construction of this one-story office building (UG 6) with accessory parking for a term of 20 years; and

WHEREAS, the applicant represents that there have not been any changes since the prior approval; and

WHEREAS, the applicant now requests a 20-year extension of term; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 17, 1983, so that as amended this portion of the resolution shall read: “to grant an extension of term for an additional term of 20 years from the expiration of the prior grant, to expire on May 17, 2023; *on condition*:

THAT the site shall be kept clear of graffiti;

THAT there shall be a maximum of seven on-site parking spaces;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(NB 362/1982)

Adopted by the Board of Standards and Appeals, December 5, 2006.

757-89-BZ

APPLICANT – Cozen O’Connor, Barbara Hair, Esq., for 401 Commercial, L.P., owner; Bally Sports Club, Inc., lessee.

SUBJECT – Application October 5, 2006 – Extension of Term and waiver of the rules for a Special Permit (§73-36) to allow a Physical Cultural Establishment in a C6-4.5 zoning district within the Midtown Special District.

PREMISES AFFECTED – 401 Seventh Avenue, a/k/a 139 West 32nd Street, Block 808, Lots 7501, 40, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a Physical Culture Establishment (PCE), which expired on

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January 15, 2006; and

WHEREAS, a public hearing was held on this application on November 21, 2006 after due notice by publication in *The City Record*, and then to decision on December 5, 2006; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is a through-lot, with frontage on West 32nd Street and West 33rd Street; and

WHEREAS, the site is occupied by a 23-story hotel and a 12-story mixed shopping mall/commercial office building, located in a C6-4.5 zoning district within the Special Midtown District; and

WHEREAS, the PCE operates in a portion of two adjoining buildings in separate ownership – the Hotel Pennsylvania (aka Penta Hotel) (lot 7501) and the Manhattan Mall (lot 40); and

WHEREAS, the PCE is operated as a Bally Sports Club and occupies space on the first floor, cellar, first subcellar, and second subcellar of the Penta Hotel, and the third subcellar of the Manhattan Mall; and

WHEREAS, on October 28, 1986, under BSA Cal. No. 302-86-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of the PCE in the Penta Hotel; and

WHEREAS, on January 15, 1991, under the subject calendar number, the special permit was amended to permit an extension of the PCE into the adjoining building (Manhattan Mall); and

WHEREAS, most recently, on June 15, 1999, the special permit was amended to extend the term for ten years from the expiration of the prior grant; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant represents that there have been a few minor interior modifications since the prior approval, including the installation of new turnstiles in the reception area, the reconfiguration of the towel desk in the first subcellar, and the relocation of a small office to the second subcellar; and

WHEREAS, at hearing, the Board asked the applicant to address the outstanding DOB and ECB violations at the site; and

WHEREAS, the applicant responded that the violations did not appear to apply to the PCE, but that any relevant violations would be resolved prior to issuance of the new certificate of occupancy; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 15, 1991, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the last grant to expire on January 15, 2016; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received November 6, 2006’-(5) sheets; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from January 15, 2006, expiring January 15, 2016;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application Nos. 104538047 & 104538038)

Adopted by the Board of Standards and Appeals, December 5, 2006.

70-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tenth City, LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 11, 2006 – Extension of Term of a Special Permit (§73-36) to allow a Physical Culture Establishment (New York Sports Club) in a C6-6 and C1-4.5(MID) zoning district which expired on November 1, 2006 and an amendment to legalize the increase of 1,500 square feet on the second floor.

PREMISES AFFECTED – 576 Lexington Avenue, northeast corner of Lexington Avenue and East 51st Street, Block 1306, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, an amendment to legalize an increase in floor area, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on November 1, 2006; and

WHEREAS, a public hearing was held on this application on November 14, 2006 after due notice by publication in *The City Record*, and then to decision on December 5, 2006; and

WHEREAS, the subject premises is located on the northeast corner of Lexington Avenue and East 51st Street; and

WHEREAS, the site is occupied by a 34-story commercial building, located in C6-6 and C6-4.5 zoning districts within the Special Midtown District; and

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WHEREAS, the PCE is operated as New York Sports Club and occupies 280 sq. ft. of floor area on the first floor and 24,700 sq. ft. of floor area on the second floor of the subject building; and

WHEREAS, on December 16, 1997, the Board granted a special permit, pursuant to ZR § 73-36, to permit the continued operation of the PCE in the subject building; and

WHEREAS, the instant application seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, additionally, the applicant proposes to legalize a 1,500 sq. ft. increase in floor area on the second floor; the approved floor area on the second floor is currently 23,200 sq. ft.; and

WHEREAS, the applicant states that the additional space is located adjacent to the space originally occupied by the PCE, as reflected on the approved plans, and is used for additional fitness-related equipment and activities; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendment to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 16, 1997, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant to expire on November 1, 2016; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received September 11, 2006'-(3) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from November 1, 2006, expiring November 1, 2016;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 101417273)

Adopted by the Board of Standards and Appeals, December 5, 2006.

330-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Katz, owner; Anthony Gaudio, lessee.

SUBJECT – Application May 25, 2006 – requesting an extension of term/waiver and an amendment of a Physical Cultural Establishment located within a C1-6A zoning district in the Special Transit Land Use District, commencing on

February 16, 1995 and expiring on February 16, 2005. The amendment sought includes a change in operating control and proposed minor physical alterations to the establishment.

PREMISES AFFECTED – 242 East 14th Street, south side of 14th Street, Block 469, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ron Mandell.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to the approved plans, approval of a change in operator, and an extension of term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on February 16, 2005; and

WHEREAS, a public hearing was held on this application on November 14, 2006 after due notice by publication in *The City Record*, and then to decision on December 5, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board, 3, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the southwest corner of East 14th Street and Second Avenue; and

WHEREAS, the site is occupied by a seven-story residential building located in a C1-6A zoning district within the Special Transit Land Use District; and

WHEREAS, the PCE will be operated as City Fitness and currently occupies 187 sq. ft. of floor space on the first floor and 7,900 sq. ft. in the cellar for a total of 8,087 sq. ft. in the subject building; and

WHEREAS, the applicant notes that the approved floor space (on the first floor and cellar level) was previously miscalculated as 7,100 sq. ft.; and

WHEREAS, the applicant represents that this error was discovered recently when the space was re-measured; and

WHEREAS, the applicant represents that the space occupied by the PCE in the cellar will remain the same as on the previously-approved plans and that the first floor space will be enlarged as noted below; and

WHEREAS, on May 16, 2000, the Board granted a special permit pursuant to ZR § 73-36, to permit the continued operation of a PCE in the subject building for a term of ten years commencing on February 16, 1995 and expiring on February 16, 2005; and

WHEREAS, on December 11, 2001, the Board granted a two-year extension of time to obtain a certificate of occupancy; and

WHEREAS, the instant application seeks to extend the

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term of the special permit for an additional ten years; and

WHEREAS, additionally, the applicant notes that the operating control of the PCE has changed and now seeks permission to change control of the PCE; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, further, the applicant proposes to enlarge the space occupied by the PCE for a total gross floor area (including the cellar level) of 9,287 sq. ft.; and

WHEREAS, specifically, the applicant proposes to occupy 1,387 sq. ft. of floor area on the first floor, to be occupied by an enlarged storefront along East 14th Street, a classroom, and a juice bar; the cellar space will be modified, but not enlarged; and

WHEREAS, at hearing, the Board asked the applicant to address a stop work order that had been issued against the PCE; and

WHEREAS, the applicant responded that a stop work order had been issued when equipment was being removed from the building in anticipation of the renovation and that this work has stopped; and

WHEREAS, based upon the above, the Board finds that the requested extension of term, change in operator, and amendment to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 16, 2000, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received November 6, 2006' – (2) sheets; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from February 16, 2005, expiring February 16, 2015;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 101444304)

Adopted by the Board of Standards and Appeals, December 5, 2006.

112-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Doris Laufer, owner.

SUBJECT – Application May 15, 2006 – Pursuant to ZR §72-01 and §72-21 for an Extension of Time to obtain a Certificate of Occupancy which expired on November 20, 2003 for a Community Use Facility-Use Group 4 (Congregation Noam Emimelech) and an Amendment that seeks to modify §24-11, front wall height-ZR §24-521, front yard-ZR §24-31, side yard-24-35, lot coverage-ZR §24-11 and ZR §23-141(b) and off-street parking requirement for dwelling units-ZR §25-22.

PREMISES AFFECTED – 1402 and 1406 59th Street, Block 5713, Lots 8 &10, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a waiver of the Rules of Practice and Procedure, a reopening, amendments to the site plan, and an extension of time to obtain a certificate of occupancy, all related to a prior grant that permitted the enlargement of an existing synagogue, which expired on November 20, 2003; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, with continued hearings on August 8, 2006, September 26, 2006 and October 31, 2006, and then to decision on December 5, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, one adjacent neighbor and two other neighbors on the block submitted letters in support of this application; and

WHEREAS, the subject zoning lot is located on the southwest corner of 14th Avenue and 59th Street; and

WHEREAS, the site is located in an R5 zoning district; and

WHEREAS, the site comprises two lots; lot 8 is occupied by an existing three-story with cellar synagogue facility and lot 10 is vacant; and

WHEREAS, the site has a combined lot width of 60'-0", a depth of 100'-2", and a total lot area of 6,010 sq. ft.; and

WHEREAS, this application was brought on behalf of the Congregation Noam Emimelech (the "Synagogue"); and

WHEREAS, on November 20, 2001, under the subject calendar number, the Board granted a variance, pursuant to ZR §

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72-21, to permit in an R5 zoning district, an enlargement of the synagogue located on lot 8; and

WHEREAS, the BSA-approved plans for this grant included the demolition of a two-story two-family home on lot 10 and the construction of a new three-story synagogue with sexton's apartment, to be combined with the existing building on lot 8 in order to create a single Synagogue facility; and

WHEREAS, the plans provided for 10,480 sq. ft. of floor area, an FAR of 1.74, a height of 32'-0", a 18'-2" front yard along 59th Street, a 10'-0" front yard along 14th Avenue, no side yard at the easternmost lot line, and a 10'-0" side yard at the southernmost lot line; and

WHEREAS, the 2001 proposal required waivers for the absence of an eastern side yard and for off street parking; and

WHEREAS, subsequently, the two-story building on lot 10 was demolished but the new building was never constructed; and

WHEREAS, the applicant now proposes to modify the previously-approved plans in an effort to better integrate the interior space as well as improve the outward appearance of the Synagogue's building; and

WHEREAS, thus, the applicant now proposes to build a modified version of the three-story building with the following additions: (1) a two-story and cellar extension at the front of the lot 8 building along the 59th Street frontage, (2) a two-story and cellar extension at the front of the lot 10 building along the 59th Street frontage to match the proposed two-story extension to the lot 8 building, and (3) a two-story extension in the southern side yard behind the lot 10 building; and

WHEREAS, the proposed enlargement will add approximately 5,416 sq. ft. of floor area to the existing 6,480 sq. ft. of floor area currently on lot 8, for a total floor area of 11,896 sq. ft.; and

WHEREAS, the total proposed floor area of 11,896 sq. ft. and FAR of 1.98 will comply with R5 zoning district regulations; and

WHEREAS, the changes noted above require new waivers for height, front yard, side yard, sky exposure plane, and lot coverage; and

WHEREAS, specifically, the proposed changes to the approved plans which require waivers include: an increase in height from 32'-0" to 37'-4" (35'-0" is the maximum permitted), and a decrease in the front yard depth along 59th Street from 18'-2" to 8'-0" on lots 8 and 10 (10'-0" is the minimum permitted); and

WHEREAS, additionally, the southern side yard on lot 10 will be occupied by a two-story enlargement which extends 5'-0" into the yard; the two-story front and side yard extensions encroach into the sky exposure plane; and

WHEREAS, the proposed changes also result in 70.016 percent total lot coverage for the combined building (60 percent is the maximum permitted); and

WHEREAS, in an earlier iteration of the revised plans, the applicant sought an increase in floor area to 12,324 sq. ft., an increase in FAR to 2.05, a larger two- and three-story enlargement within the 59th Street front yard, and a three-story enlargement within the southern side yard on lot 10; and

WHEREAS, the applicant represents that the proposed

modifications will help accommodate the Synagogue's congregation and will include a kollel, which is a religious educational facility for married Jewish adults in which *Torah* and Jewish traditions are taught; and

WHEREAS, the applicant represents that the existing kollel space is overcrowded; and

WHEREAS, the applicant also represents that the enlargement will accommodate additional facilities for the growing number of women attending the Synagogue; and

WHEREAS, additionally, the applicant represents that the proposed enlargement is designed to better serve the existing congregation and to accommodate a minor increase in attendance; and

WHEREAS, at hearing, while noting the needs of the synagogue, the Board expressed concern about the diminished size of the front yard and asked the applicant to provide a front yard that was more in context with the block along 59th Street; and

WHEREAS, in response to the Board's concern about the front yard along 59th Street, the applicant increased the front yard from 6'-0" to 8'-0"; and

WHEREAS, additionally, the Board asked if the size of the rabbi's apartment could be decreased so as to reduce the amount of the encroachment into the front yard above the first floor and into the sky exposure plane; and

WHEREAS, the applicant responded that it was necessary to provide additional space to meet the Synagogue's programmatic needs, which include space for the rabbi to meet congregants in the rabbi's apartment; and

WHEREAS, nevertheless, the applicant reduced the size of the rabbi's apartment and increased the depth of the southern side yard to 10'-0" on the third floor; and

WHEREAS, further, the Board asked the applicant to reduce the front yard encroachment along 59th Street at the third floor; the Board noted that this space was occupied by a dressing room, which could be eliminated; and

WHEREAS, in response, the applicant removed the dressing room and the third floor encroachment into the front yard; and

WHEREAS, these changes resulted in a reduction of the floor area to a complying 11,896 sq. ft. and a reduction in the total proposed FAR to a complying 1.98; and

WHEREAS, the Board notes that the elimination of the encroachments above the second floor increases the depth of the 59th Street front yard, providing a more compatible design; and

WHEREAS, as to the progress of construction at the site, the applicant represents that after the demolition of the two-story building on lot 10, the Synagogue did not commence construction because it determined that a redesign was necessary to make more efficient use of the combined buildings; and

WHEREAS, based on the above, the Board finds that the proposed amendments and an extension of time to complete construction and obtain a certificate of occupancy are appropriate.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, said resolution having been adopted on November 20, 2001 so that as amended this portion of the

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resolution shall read: “to permit the proposed modifications to the approved plans for a three-story and two-story enlargement to the existing synagogue building and to permit an extension of time to complete construction and obtain a certificate of occupancy *on condition* that all work and site conditions shall comply with drawings marked ‘Received October 18, 2006’– (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building and the yard dimensions: a total floor area of 11,896 sq. ft. (1.98 FAR), a height of 37’-4”, an 8’-0” front yard along 59th Street, a 10’-0” front yard along 14th Avenue, a 10’-0” side yard along the southern lot line on lot 8, a 5’-0” side yard along the southern lot line on lot 10, and a lot coverage of 70.016 percent, all as illustrated on the BSA-approved plans;

THAT the conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT a certificate of occupancy shall be obtained within two years of the date of this grant;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. (DOB Application No. 301109066)

Adopted by the Board of Standards and Appeals, December 5, 2006.

23-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yossi Kraus, owner.

SUBJECT – Application July 19, 2006 – Pursuant to ZR §73-11 and §73-622 this application is for an amendment to a previously granted Special Permit for the enlargement of a single family home for the proposed increase in floor area from .62 to 1.002 (+1,141.6 sq. ft.). The proposed plans are contrary to ZR §23-141(a) -floor area, open space; §23-48 minimum side yard and 23-47-minimum rear yard. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1150 East 23rd Street, west side, Block 7622, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted special permit for the enlargement of a single-family home; and

WHEREAS, a public hearing was held on this application on September 12, 2006 after due notice by publication in the *City Record*, with a continued hearing on November 14, 2006

and then to decision on December 5, 2006; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the west side of East 23rd Street, between Avenue K and Avenue L and is within an R2 zoning district; and

WHEREAS, the zoning lot is currently improved with a two-story single-family home; and

WHEREAS, on June 8, 2004, the Board granted a special permit, pursuant to ZR § 73-622, for the enlargement of this existing single-family home; and

WHEREAS, the proposed 2004 enlargement was never built; and

WHEREAS, the applicant now proposes to modify the approved plans; and

WHEREAS, specifically, the applicant proposes to add an attic and to further enlarge the second floor; and

WHEREAS, the changes to the plans include the following: 1) an increase in the overall height from 27’-4” to 35’-6”; 2) an increase in the total floor area from 1,865.71 sq. ft. (0.62 FAR) to 3,007.31 sq. ft. (1.002 FAR); 3) a decrease in the open space ratio from 103 percent to 63.75 percent; and 4) the addition of an attic with 926.25 sq. ft. of floor area; and

WHEREAS, the applicant represents that all of the proposed yard dimensions are consistent with those reflected on the approved plans; and

WHEREAS, the applicant represents that no new waivers are required; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit in the subject zoning district; and

WHEREAS, the Board concludes that the proposed amendment does not affect the prior findings for the special permit; and

WHEREAS, accordingly, the Board finds that the proposed amendments are appropriate.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on June 8, 2004, so that as amended this portion of the resolution shall read: “to permit modifications to the BSA-approved plans including: an increase in height and floor area, a decrease in the open space ratio, the addition of an attic, and all other associated modifications *on condition* that all work and site conditions shall comply with drawings marked ‘Received July 19, 2006’– (6) sheets and ‘October 5, 2006’–(3) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall contain a maximum of 926.25 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the parameters of the building: a total floor area of 3,007.31 sq. ft. (1.002 FAR), a total height of 35’-6”, a front yard of 24’-10 ½”, one side yard of 7’-2”, one side yard of 2’-10”, a rear yard of 20’-0”, and an open space ratio of 63.75 percent, all as illustrated on the BSA-approved plans;

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THAT any porches shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

(DOB Application No. 301693852)

Adopted by the Board of Standards and Appeals, December 5, 2006.

308-79-BZ

APPLICANT – Stuart A. Klein, Esq., for St. George Tower & Grill Owners Corp., owner; St. George Health & Racquet Assoc. LLC; lessee.

SUBJECT – Application July 3, 2006 – Extension of Term/Amendment/Waiver – To allow the continuation of an existing Physical Culture Establishment, located in a R7-1 (LH-1) zoning district, which was granted pursuant to §73-36 of the zoning resolution. The amendment seeks to make minor interior modifications.

PREMISES AFFECTED – 43 Clark Street, a/k/a 111 Hicks Street, south west corner of Hicks and Clark Streets, Block 231, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Madeline Fletcher.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for continued hearing.

619-83-BZ

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver-for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 10 A.M., for continued hearing.

190-92-BZ

APPLICANT – Alfonso Duarte, for 180 Tenants Corp., owner; Waterview Parking Inc., lessee.

SUBJECT – Application August 15, 2006 – Extension of Term to allow the use of surplus parking spaces for transient parking which was granted contrary to Section 60, Sub. 1b of the Multiple Dwelling Law. R10A & R8B zoning district.

PREMISES AFFECTED – 180 East End Avenue, north side between East 88th and East 89th Streets, Block 1585, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 10 A.M., for continued hearing.

44-06-BZ, Vol. II

APPLICANT– Rothkrug, Rothkrug & Spector, for Philip & Laura Tuffnel, owner.

SUBJECT – Application October 13, 2006 – Rehearing of a previously granted variance (§72-21) the vertical enlargement of an existing single family home, to permit notification of affected property owners and public officials in an R3A zoning district.

PREMISES AFFECTED – 150-24 18th Avenue, south side of 18th Avenue, 215' east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

331-05-A

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Rock Development Corp., owner.

SUBJECT – Application November 17, 2005 – to permit the construction of the one family dwelling within the bed of mapped street, 153rd Place, contrary to General City Law Section 35. Premises is located in an R3-1 Zoning District.

PREMISES AFFECTED – 15-59 Clintonville Street a/k/a 15-45 153rd Place, east side of Clintonville Street, bed of mapped 153rd Place, Block 4722, Lot (tentative 19), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 19, 2005, acting on Department of Buildings Application No. 402071048, reads in pertinent part:

“Construction of dwelling within the bed of a mapped street is contrary to Section 35 of the General City Law.”; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, and then to decision on December 5, 2006; and

WHEREAS, the subject property is located in an R3-1 zoning district; and

WHEREAS, the subject property consists of three tax lots with a total width of 70 feet and a total depth of 187 feet; and

WHEREAS, the applicant proposes to build three two-story dwellings; the dwelling on at 15-59 Clintonville will be located within the bed of a mapped street (153rd Place); and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, by letter dated February 27, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an adopted Drainage Plan No. 37A(5), 37C(1), and 37F.S(2), which calls for a future 12-inch diameter combined sewer to be installed in 153rd Place, between Cross Island Parkway and Clintonville Street; and

WHEREAS, therefore, DEP asked that the applicant provide a 31-ft. wide sewer corridor for the purpose of the future installation, maintenance, and/or reconstruction of the drainage plan; a 12-inch combined sewer; ingress and egress for lots 15, 19, 21, and 24; and establish a Home Owner’s Association; and

WHEREAS, in response to DEP’s request, the applicant

proposes a 25 ft., 7 in. wide sewer corridor for the installation, maintenance, and/or reconstruction of the future sewers; and

WHEREAS, by letter dated August 3, 2006, DEP states that it has reviewed this proposal and finds it acceptable; and

WHEREAS, by letter dated May 25, 2006, the Department of Transportation (DOT) states that it has reviewed the application and advises the Board that the proposal does not reflect any provisions for an emergency vehicle access/turnaround such as a cul-de-sac at the dead end of 153rd Place; and

WHEREAS, by letter dated June 2, 2006, the applicant represents that a cul-de-sac would eliminate the possibility of construction on the subject premises; and

WHEREAS, by letter dated October 3, 2006, the Fire Department states that it has reviewed the application and has no objections to the plan, which does not reflect a cul-de-sac; and

WHEREAS, furthermore, a representative of the Fire Department stated at hearing that the proposal provided sufficient access for emergency vehicle turnaround and did not present a fire safety issue; and

WHEREAS, since the Fire Department, the municipal agency that obviously has the most expertise in evaluating a site plan in order to determine if it poses a problem in terms of emergency vehicle access and turnaround, has refuted DOT’s contention, the Board views DOT’s concerns as unfounded; and

WHEREAS, finally, the Board notes that DOT concedes that the subject property is not presently included in DOT’s Capital Improvement Program; and

WHEREAS, based on the above, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 19, 2005, acting on Department of Buildings Application Nos. 402071048 is modified by powers vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received September 26, 2006”- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2006.

63-06-A & 81-06-A

APPLICANT – Sheldon Lobel, P.C.,

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OWNERS: Kevin and Alix O'Mara

SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.

PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown.....3

THE RESOLUTION: 1

WHEREAS, the instant appeals are brought by two property owners, the homes of which are adjacent to the subject premises; and

WHEREAS, the first appellant (“Appellant 1”) is the owner of the property located at 158 East 83rd Street, and the second appellant (“Appellant 2”) is the owner of the property located at 156 East 83rd Street (collectively, “Appellants”); and

WHEREAS, in the interest of convenience, and with the consent of each Appellant, the Department of Buildings (“DOB”) and the owner of the premises (the “Owner”), the Board heard the two appeals concurrently, and the record is the same for both; and

WHEREAS, the appeals challenge two almost identical DOB final determinations, signed by then-Manhattan Borough Commissioner Laura Osorio, RA, one dated April 7, 2006 and issued to Appellant 1, and the other dated April 24, 2006 and issued to Appellant 2 (collectively, the “Final Determinations”); and

WHEREAS, as reflected in the Final Determinations, DOB refused to revoke a permit (No. 10153229; hereinafter the “Permit”) issued to the Owner for an enlargement of an existing townhouse located at the premises (the “Enlargement”); and

WHEREAS, the Final Determination reads in pertinent part:

“This responds to your letters ... wherein you object to the permit issued in connection with the referenced application at 160 East 83rd Street and request that the permit be revoked.

Specifically, you claim that the approval violates the Department’s memorandum dated May 13, 1982 (the “1982 Memo”) as you contend that it requires applicant to provide a rear yard along the rear lot line that abuts your property. Moreover, you object to the Department permitting the building without the proper frontage requirements, as set forth in Section 27-291 of the Administrative Code.

This affirms Deputy Commissioner Fatma Amer’s reconsideration dated January 24, 2006 wherein she accepted the proposed reconstruction of a one-story building without a set back along the rear lot line of your premises, based on the zoning lot having existed as a “pre-1961 zoning lot” and provided “a 30 foot rear yard” is maintained along the 55’9” rear lot line, as per Section 23-47 ZR. In addition she noted that an existing one-story building was located in the questionable area and she requested the plan examiner to verify “proof of existing lot and one story portion to be reconstructed.”

The subject lot has a rear yard along the entire width of the rear yard and therefore satisfies ZR 23-47, which provides “one rear yard with a depth of not less than 30 feet shall be provided on any zoning lot.” However, you contend that the permit is contrary to the Department’s requirements as set forth in a memorandum dated May 28, 1982 (the “1982 Memo”). The 1982 Memo applies to a building constructed on a flag pole-shaped lot where a significant portion of the building does not front the street, but rather is behind an adjoining lot. In such case, the 1982 Memo proposes that an additional yard must be provided along the adjoining lot’s rear lot line, in addition to providing a rear yard along the remote lot line of the zoning lot. The 1982 Memo further provides different dimensions for required yards depending on whether the building frontage meets the requirements of Section 27-291 (formerly C26-401.1) of the Administrative Code. The sketch that accompanies the 1982 Memo, a copy of which is attached hereto, clarifies that the area of the yard in question is the dimension in front of the proposed building, and is written to ensure that the building has adequate frontage. Therefore, the 1982 Memo is about providing yards to satisfy the Code’s street frontage requirements and not about the zoning rear yard requirements. This is the only proper explanation of the 1982 Memo, as a Department memorandum may not impose zoning requirements that are not set forth in the Zoning Resolution.

The proposed construction satisfies the requirements of the 1982 Memo. The 1982 Memo provides that if there is inadequate building frontage to satisfy

1 Headings are utilized only in the interest of clarity and organization.

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Administrative Code §27-291, an additional yard must be provided along the adjoining lot's rear lot line to address the frontage concern. Administrative Code § 27-291 is about providing the Fire Department with sufficient access to the building in the event of a fire. In the instant matter, a yard in such location would not help these concerns since there is an existing building along the street frontage that would prevent access to that area behind the adjoining lot. Therefore, the reconsideration dated November 1, 2005, that required that the building be sprinklered, was the proper method for ensuring compliance with Administrative Code § 27-291. Moreover, failure to follow the 1982 Memo has no bearing on its application to the Zoning Resolution's rear yard requirements.

Notwithstanding that the purpose of the 1982 Memo is to address street frontage, the Department has applied the memorandum to help interpret the Zoning Resolution's rear yard requirements where an irregular shaped lot is created to avoid compliance with zoning or to otherwise undermine the intent of the Zoning Resolution. That is not the case here where the subject premises was a lot of record well before December 15, 1961, as evidenced by the 1935 certificate of occupancy and 1949 deed, and a rear yard is provided along the entire width of a zoning lot, to satisfy ZR 23-47.

This also affirms Deputy Commissioner Amer's reconsideration dated November 1, 2005 wherein she accepted the 18'-5" frontage "as complying with Section 27-291 of the Administrative Code, provided the first and second floors and any additional level that may be created to exceed the current footprint of the building [are] sprinklered." The commissioner's authority to waive provisions of the administrative code is set forth in Section 645(b)(2) of the Charter of the City of New York and Section 27-107 of the Administrative Code.

The Department has discussed this matter with the Department of City Planning who supports our determination. This is a final determination that may be appealed to the Board of Standards and Appeals"; and

HEARINGS

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in *The City Record*, on which date a decision was set for September 26, 2006; and

WHEREAS, on September 26, the matter was reopened and a continued hearing was conducted; a further continued hearing was held on October 17, 2006, on which date the hearing was again closed; a decision was subsequently set for December 5, 2006; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, Appellant 1, the Owner, and DOB were represented by counsel in this proceeding; and

WHEREAS, Appellant 2 appeared on his own behalf; and

WHEREAS, Appellants also offered testimony from zoning and building law practitioners; and

WHEREAS, although each Appellant made separate submissions and focused on particular arguments (described below), each adopted the arguments of the other; and

WHEREAS, the following elected officials support the appeals: Borough President Stringer, Council Members Lappin and Garodnick, Assembly Members Glick and Bing, State Senator Krueger, and Congressperson Maloney; and

WHEREAS, Community Board 8, Manhattan, also supports the appeal; and

WHEREAS, several civic and neighborhood associations and area residents testified or made submissions in support of the appeal; and

WHEREAS, representatives of the City's Fire Department ("FDNY") provided testimony and submitted a letter; and

WHEREAS, finally, counsel to the Department of City Planning ("DCP") submitted a letter supporting the position of DOB; and

THE LOTS

WHEREAS, the subject premises is an "L"-shaped flag lot, with 18'-5" of frontage on East 83rd Street (hereinafter, the "Owner's Lot"); and

WHEREAS, all parties agree that it is an interior lot, as defined by the City's Zoning Resolution ("ZR"); and

WHEREAS, the Owner's Lot and Appellants' lots are within an R8B zoning district; and

WHEREAS, the Owner's Lot is occupied by a three and four-story townhouse, which extends 77'-0" from the front lot line; and

WHEREAS, at a depth of 77'-0", the flag portion of the Owner's Lot begins; the flag portion is 45'-2" deep and 55'-9" wide at the far rear lot line (located at the south end of the premises), which coincides with the rear lot lines of properties that front on East 82nd Street; and

WHEREAS, in addition to the far rear lot line, the Owner's Lot has a near rear lot line, which coincides with the rear lot lines of Appellants' lots for 37'-4"; and

WHEREAS, Appellant 1's lot is adjacent to the west of the Owner's Lot, and is 18'-5" wide and 77'-0" deep; and

WHEREAS, Appellant 1's lot is occupied by a four-story townhouse, and has a non-complying rear yard of 25'-2" (in an R8B zoning district, a rear yard must be 30'-0"); and

WHEREAS, Appellant 2's lot is adjacent to the west of Appellant 1's lot, and is 18'-11" wide and 77'-0" deep; and

WHEREAS, Appellant 2's lot is occupied by a two and four-story townhouse, and has a non-complying rear yard of 3'-6"; and

WHEREAS, the three lots have existed in their present configuration since prior to December 15, 1961, the date on which the current version of the ZR took effect; and

PRE-BOARD PROCEDURAL HISTORY

WHEREAS, On June 27, 2005, the Owner applied to DOB to enlarge the existing townhouse under DOB Application No. 10153229; the Enlargement was then proposed to be a three-story addition extending into the flag portion of the Owner's Lot; and

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WHEREAS, the northernmost wall of the Enlargement was proposed to be located directly on the common lot line between the Owner's Lot and the Appellants' lots (the near rear lot line of the Owner's Lot); and

WHEREAS, the application for the Permit was reviewed by a plan examiner; and

WHEREAS, at some juncture, Appellant 1 contacted DOB, protesting the Permit application for the reasons reflected in the Final Determinations; and

WHEREAS, the record indicates that this resulted in significant internal discussion at DOB, involving senior DOB technical officials; and

WHEREAS, the record contains the official product of this internal discussion, including correspondence between DOB and the parties; and

WHEREAS, on March 8, 2006, DOB issued the Permit; and

WHEREAS, on March 23, 2006, Appellant 1 then filed his appeal at the BSA (Cal. No. 63-06-A); and

WHEREAS, on April 24, 2006, Appellant 1 commenced an action in Supreme Court, New York County, seeking to enjoin construction; this action was subsequently dismissed on May 3, 2006; and

WHEREAS, on May 2, 2006, Appellant 2 filed his appeal (Cal. No. 81-06-A); and

WHEREAS, during the hearing process, Appellants suggested that the Final Determinations are predicated on unsubstantiated assertions as to the previously existing conditions on the Owner's Lot and that DOB's internal process prior to the issuance of the Permit was flawed; and

WHEREAS, specifically, Appellants allege that the Final Determinations appear to be predicated in part on the assumption that there used to be a structure in the same area on the Owner's Lot where the Enlargement is proposed to be located; and

WHEREAS, however, in its initial submission, DOB refutes the contention that the Final Determinations rely upon the prior existence of a structure at this location; and

WHEREAS, further, while the record indicates that there may have been some initial uncertainty at DOB as to how to approach the Permit application and as to the importance of the prior improvements on the Owner's Lot, the Board notes it has no authority to review DOB's internal, pre-determination process under City Charter § 666(6)(a); and

WHEREAS, this Charter section specifically provides that the Board may review only a determination of DOB's Commissioner or one of the Borough Commissioners; and

WHEREAS, accordingly, considerations of internal discussion at DOB are irrelevant to the Board's review of the Final Determinations; and

ISSUES PRESENTED

WHEREAS, Appellants make two primary arguments in support of their position that DOB should revoke the Permit: (1) DOB erred in not requiring that a second 30'-0" rear yard be provided on the near rear lot line of the Owner's Lot; (2) DOB erred in waiving compliance with Building Code § 27-291, which concerns the required amount of street

frontage; and

WHEREAS, these two arguments will be addressed below; and

WHEREAS, additionally, the Board will examine a prior BSA decision made on similar facts (BSA Cal. No. 388-78-A, adopted on July 18, 1978; hereinafter the "Prior Decision") and the May 28, 1982 DOB memorandum referenced in the Final Determinations (the "1982 Memo"), given that Appellants make certain ancillary arguments based upon them; and

WHEREAS, finally, the Board will examine a particular aspect of the Final Determinations regarding DOB's distinction between pre and post-1961 lots, which, while not dispositive of the appeals, demands attention; and

SECTION 23-47 OF THE ZONING RESOLUTION

WHEREAS, as noted above, one of Appellants' primary contentions is that ZR § 23-47 requires that a rear yard be provided along all rear lot lines of any interior zoning lot; and

WHEREAS, ZR § 23-47 (hereinafter, "23-47"), which is listed under the heading "Basic Regulations – Rear Yards" reads in pertinent part: "In all districts [R1 through R10] . . . one rear yard with a depth of not less than 30 feet shall be provided on any zoning lot except a corner lot and except as otherwise provided in Sections 23-52 (Special Provisions for Shallow Interior Lots), 23-53 (Special Provisions for Through Lots), or 23-54 (Other Provisions for Rear Yards)."; and

WHEREAS, it is undisputed that the Owner's Lot is subject to this provision, as it is not a corner lot nor is it subject to the other provisions; and

WHEREAS, DOB and the Owner state that this provision requires that one rear yard be provided on an interior zoning lot, regardless of whether it is a flag lot and regardless of the number of rear lot lines; and

WHEREAS, DOB and the Owner observe that a 30 ft. rear yard will be provided along the full length of the far rear lot line; and

WHEREAS, Appellants contend that DOB erred in applying 23-47 for the following reasons: (1) DOB's reading ignores the fact that certain italicized terms or words in 23-47 are defined in ZR § 12-10, which must be inserted into 23-47 in order to properly apply the provision's plain language; and (2) when this provision is viewed in context of the ZR's rear yard scheme as reflected in other provisions and in context of the legislative history of the ZR, it is clear that the framers of the ZR intended that a rear yard be provided along all rear lot lines of an interior lot, not just one; and

WHEREAS, as to the first reason, Appellants state that if the definitions of the italicized defined terms are inserted into 23-47, then it is clear that a rear yard is required along every rear lot line of an interior lot; and

WHEREAS, in a submission dated September 12, 2006, Appellants provide further explication of this argument, noting that the italicized term "rear yard" is defined as "a yard extending for the full length of a rear lot line"; and

WHEREAS, Appellants then explain that a "rear lot line" is defined as "any lot line of a zoning lot except a front lot line, which is parallel or within 45 degrees of being

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parallel to, and does not intersect, any street line bounding such zoning lot.”; and

WHEREAS, Appellants assert that it follows that a rear yard is required at any rear lot line of a zoning lot; and

WHEREAS, the Board is aware that it should refrain from strained constructions that ignore the plain language of the provision; and

WHEREAS, the Board is also aware that it must presume that the framers of the ZR deliberately placed a word in a provision with a specific purpose and that each word must be given meaning if possible; and

WHEREAS, Appellants’ construction of 23-47 fails on both accounts; and

WHEREAS, first, Appellants diverge into a detailed examination of the word “any” – as used in the phrase “any lot line” in the “rear lot line” definition – in an effort to convince the Board that it must be read to mean “every”, and that consequently “every” rear lot line of a zoning lot must have a separate rear yard; and

WHEREAS, this examination considers dictionary definitions of the word “any” and citations to case law that address the word “any”, and relies upon complicated arguments as to why “any” must be read to mean “every” in the context of the ZR § 12-10 definition of “rear lot line”; and

WHEREAS, the Board finds this examination both strained and irrelevant; and

WHEREAS, the Board also finds that it verges into interpretation, as opposed to application of plain language; and

WHEREAS, further, as noted by the Owner, the word “any” is used in the definition of “rear lot line” to ensure that lot lines are appropriately defined as rear lot lines if they meet the definition; the word “any” requires that all such lot lines must be defined as “rear lot lines”; and

WHEREAS, the Owner argues, and the Board agrees, that Appellants impermissibly change the function of the word “any” into a requirement that rear yards be provided along all rear lot lines, when the word “any” is not used to impose a requirement, but to help define and categorize the various lot lines of zoning lot; and

WHEREAS, second, Appellants’ reading completely and impermissibly ignores the use of the word “one” in 23-47; and

WHEREAS, as noted by DOB, had the framers desired to require that each and every rear lot line on an interior zoning lot be provided a rear yard, this would have been clearly reflected, in either this provision or a separate one; and

WHEREAS, instead, the framers chose to use the word “one” when establishing how many rear yards had to be provided on an interior zoning lot; and

WHEREAS, further, the Board observes that 23-47 is not an example of a provision that uses a particular word in a superfluous way such that it can be appropriately ignored; and

WHEREAS, the Board notes that the word “one” has a specific quantitative meaning that is very important in the context of 23-47; and

WHEREAS, as used in 23-47, the word “one” functions as a numerical adjective, and connotes singularity, not multiplicity; and

WHEREAS, here, it is possible for the word “one” to be given its obvious quantitative meaning, since the Owner’s Lot can and does provide one rear yard; and

WHEREAS, Appellants’ counter-argument relies upon ZR § 12-01(d), which provides in pertinent part “words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary”; and

WHEREAS, Appellants conclude that the use of the word “one” is not controlling unless dictated by the context; and

WHEREAS, Appellants assert that the context here requires that the plural of “one” be used; and

WHEREAS, thus, under Appellants’ interpretation of ZR §12-01(d), any time the ZR modifies a zoning requirement with a numerical adjective that specifies a singular or multiple amount, the amount could be modified to the singular or multiple depending on the context; and

WHEREAS, first, the Board notes that when the word “one” is used as adjective rather than a noun, it has no plural form; and

WHEREAS, this fact leads the Board to conclude that ZR § 12-01(d) should not apply to numerical adjectives such as “one”, which modify zoning provisions in terms of the amount of what is required; and

WHEREAS, rather, it is clear that ZR § 12-01(d) was meant to apply to non-numerical words or terms; and

WHEREAS, finally, the Board disagrees that there is any context present in 23-47 that would require that the word “one” be read to mean “two” or some other numerical adjective; and

WHEREAS, as noted above, the use of the word “one” creates the opposite context, since its meaning specifically refers to the singular when it modifies another word or term; and

WHEREAS, thus, the Board finds this counter-argument to be without merit; and

WHEREAS, in sum, the Board agrees with DOB that the plain language of 23-47 does not allow for an application that would ignore the word “one”; and

WHEREAS, consequently, the Board finds that the part of the Final Determinations that rejects Appellants’ contention that 23-47 requires more than one rear yard on an interior flag lot is reasonable and must be upheld, based upon the plain language of the provision; and

WHEREAS, in addition to its strained plain language argument, Appellants contend that the Board should look past the plain language and examine the entire ZR and its legislative history in order to determine the intent of the framers as to 23-47; and

WHEREAS, the Board notes that such interpretation and examination of extrinsic evidence is not required if the plain language of the provision in question is clear; and

WHEREAS, nevertheless, even assuming *arguendo* that the Board was required to look beyond the plain language, it

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would still find that DOB appropriately applied 23-47; and

WHEREAS, Appellants argue that the intent of the ZR's rear yard scheme is to provide a rear yard along all rear lot lines of an interior zoning lot, notwithstanding the plain language of 23-47; and

WHEREAS, Appellants, in support of this argument, direct the Board's attention to the legislative history of the ZR, and to another rear yard provision, ZR § 23-543 "For portions of through lots" (hereinafter, "23-543"); and

WHEREAS, as to legislative history, Appellants cite to a study prepared in advance of the enactment of the 1961 ZR known as the Voorhees Report; and

WHEREAS, all parties agree that one of the goals of a 30'-0" rear yard requirement, at least as reflected by some language in the Voorhees Report, is the provision of a 60'-0" separation between the buildings of two lots adjoining each other "back-to-back", with each building having its own frontage on a separate street; and

WHEREAS, in fact, in many residentially zoned blocks within the City, that is exactly the condition that exists; and

WHEREAS, the open space on such blocks is commonly referred to as the "donut", since the open area surrounded by buildings resembles the hole of a donut; and

WHEREAS, Appellants contend that the general goal of protecting light and air as evidenced in the Voorhees Report requires that a rear yard also be provided along the rear rear lot line of the Owner's Lot in order to protect light and air to Appellants' lots; and

WHEREAS, however, both DOB and the Owner argue that the intent of the framers of the ZR is not so general, and that the true intent is limited to the preservation of the donut; and

WHEREAS, DOB and the Owner note that the Owner's Lot still contributes to the donut to the extent contemplated by the framers, through the provision of the 30'-0" rear yard at the far rear lot line; and

WHEREAS, the Board agrees that through the provision of a rear yard at the far rear lot line, the rear yard scheme as apparently contemplated by the framers is preserved; and

WHEREAS, additionally, Appellants have not shown that the Voorhees Report contains any indication that lots outside the donut, such as Appellants' lots, were specifically considered for additional or special protection if they abutted a flag portion of another interior lot; and

WHEREAS, nor do other yard provisions in the ZR support Appellants' position; and

WHEREAS, the Board observes that the ZR's yard regulations cover not only interior lots, but also corner and through lots, and also provide when such basic regulations may be modified given a particular circumstance; and

WHEREAS, for instance, yard requirements are reduced when a lot is shallow; and

WHEREAS, however, in spite of this well-considered range of explicit provisions for different lot types and configurations, the ZR does not contain any provision that modifies 23-47 if the interior lot in question is flag-shaped; and

WHEREAS, the Board concludes that the absence of any provision in the ZR specifically addressing flag-shaped interior lots as opposed to regularly-shaped interior lots evidences a lack of intent to regulate flag-shaped interior lots any differently; and

WHEREAS, nonetheless, Appellants suggest that an examination of 23-543 supports the contention that the framers did intend to protect lots such as those owned by Appellants; and

WHEREAS, 23-543 reads "In all districts, as indicated, along any rear lot line of a portion of a through lot which coincides with a rear lot line of an adjoining zoning lot, a rear yard shall be required as if such portion were an interior lot"; and

WHEREAS, pursuant to ZR § 12-10, a "through lot" is "any zoning lot, not a corner lot, which adjoins two street lines opposite to each other and parallel or within 45 degrees of being parallel to each other"; and

WHEREAS, the typical through lot is one that has frontages on two parallel streets; and

WHEREAS, 23-543 governs situations where through lots have a flag-shaped appendage, and provides that rear yards must be provided on such appendages as if they were interior lots; and

WHEREAS, Appellants concede that the Owner's Lot is not a through lot; and

WHEREAS, however, Appellants argue that it does not make sense to require a rear yard on a flag portion of a through lot to protect property owners on both sides of the flag, but not on a flag portion of an interior lot where there are also adjacent property owners; and

WHEREAS, DOB responds that through lot provisions are unique in that they allow a building to be constructed in the middle of the block; and

WHEREAS, DOB views 23-543 as a provision that ensures that an open yard will still be provided in the middle of a block in instances where a rear lot line of a through lot appendage abuts adjoining properties; and

WHEREAS, DOB notes that on the subject block, the Owner's Lot is still contributing to the open area in the middle of the block since a 30'-0" rear yard is provided along the far rear lot line; and

WHEREAS, thus, DOB concludes that its application of 23-47 is consistent with what is achieved on through lot appendages by 23-543; and

WHEREAS, the Owner agrees, and observes that if the Owner's Lot was in fact a through lot that extended to East 82nd Street, then a full height building could have been constructed in the center of the lot, with a small structure in the flag portion, which would greatly obstruct the block's donut; and

WHEREAS, further, the Owner notes that through lots are accorded much different treatment than interior lots throughout the ZR; and

WHEREAS, given this disparate treatment, the Owner concludes that it is inappropriate to apply a through lot provision to an interior lot; and

WHEREAS, for the reasons stated, the Board agrees

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with DOB and the Owner that 23-543 does not conclusively indicate an intent on the part of the framers to treat flag-shaped interior lots in the same way as through lots with appendages; and

WHEREAS, Appellants also contend that the failure to provide a rear yard along the near rear lot line of the Owner's Lot results in the absurd consequence of Appellants' rear yards directly abutting the northern wall of the Enlargement, diminishing the degree of light and air that Appellants previously enjoyed; and

WHEREAS, Appellants argue that leaving aside any argument predicated on legislative history, rules of statutory construction prevent DOB and the Board from applying 23-47 if an absurd consequence would result; and

WHEREAS, however, the Board does not consider this result to be absurd; and

WHEREAS, the Board is aware of certain circumstances under which a building or portion thereof may be constructed directly upon a lot line, thereby enclosing an adjacent property owner's rear yard; and

WHEREAS, for instance, as noted by the Owner, a community facility could be constructed on the Owner's Lot within the flag to a height of 23 feet without the provision of a rear yard at either rear lot line; and

WHEREAS, further, a property owner's rear lot line could be an adjacent property owner's side lot line, and in a district where no side yards are required, a building could be built on this lot line, enclosing the rear yard; and

WHEREAS, the Board notes that these two examples do not represent all of the situations whereby as of right development could potentially diminish the light and air of adjacent properties; and

WHEREAS, the Board acknowledges that the Enlargement as proposed is objectionable to Appellants; and

WHEREAS, Appellants understandably have enjoyed the vacancy or near-vacancy of the flag portion of the Owner's Lot, since this condition affords them the benefit of more light and air than their non-complying rear yards could provide on their own, and without the corresponding burden of contributing to the block's donut ; and

WHEREAS, however, the Board finds that a preference to enjoy the benefit of the vacancy of someone else's property is not the equivalent of an absurd result; and

WHEREAS, finally, Appellants cite to certain excerpts of a 1959 zoning handbook, which indicate in a general way that yard requirements were established to provide light and air between buildings and to prevent one building from blocking light, air and sun from another; and

WHEREAS, however, as discussed above, it is plain from a review of all of the provisions actually enacted in 1961 and later, present in the existing ZR, that there are certain circumstances in which construction of buildings that block light and air to adjacent neighbors is permitted; and

WHEREAS, thus, the Board finds that the general statements reflected in the 1959 handbook should not be construed as support for the proposition that ZR rear yard provisions must be applied in such a way that maximum light and air to all of the adjacent properties is provided,

notwithstanding the plain language of a particular provision; and

WHEREAS, the Board notes that the plain language of 23-47 – which is the best indication of the intent of the framers as to interior lots – clearly specifies that one rear yard must be provided; and

WHEREAS, since one rear yard is provided along the far rear lot line, between the Owner's building as enlarged and the buildings to the rear, the goal of this particular yard regulation is achieved, and the larger goal of preventing the blockage of light and air is furthered to the extent the framers thought necessary for an interior lot; and

WHEREAS, in sum, even if the Board were required to look at legislative intent, other provisions of the ZR, or the possibility of absurd results, it would nevertheless reach the same result; and

WHEREAS, in addition to arguing that DOB's application of 23-47 leads to absurd results, Appellants argue that DOB has been inconsistent in its application of rear yard requirements, and has engaged in some interpretation of this provision; and

WHEREAS, in various submissions, Appellants cite to lot configurations and other permit approvals or applications in an effort to illustrate that DOB engages in interpretation of 23-47 contrary to the application of the provision as to the Enlargement and the Permit; and

WHEREAS, DOB states, and the Board agrees, that all such examples are distinguishable; and

WHEREAS, DOB notes that the examples are either of lots where different rear yard provisions than 23-47 would apply or where the application of 23-47 would actually lead to absurd results; and

WHEREAS, for instance, DOB explains that when it reviews a lot with a "segmented" rear lot line, where the rear lot line is at different depths, it requires a rear yard along each portion of the segment, lest a permit applicant avoid the provision of a reasonable rear yard by only applying one on the shortest of the segments; and

WHEREAS, DOB explains that it views a segmented rear lot line as a single rear lot line that extends across the width of the lot; and

WHEREAS, the Board agrees that DOB may appropriately determine when strict application of 23-47 as to a particular lot would lead to an absurd result, but, as noted above, the instant facts do not give rise to such a conclusion; and

WHEREAS, as to interpretation of 23-47 generally, DOB concedes that it must interpret 23-47 to the extent that the provision does not provide any guidance as to which rear lot line the rear yard must be provided along when there is more than one; and

WHEREAS, DOB states that consistent with the approach it takes on segmented rear lot lines, it requires that the rear yard be provided along the rear lot line that extends across the greatest portion of the zoning lot, in order to create a meaningful single rear yard; and

WHEREAS, DOB takes this approach because it avoids the possibility of developers failing to provide a meaningful

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rear yard on a zoning lot, which DOB deems absurd; and

WHEREAS, the Board observes that while 23-47 is silent as to where the rear yard must be applied on an interior lot with more than one rear lot line, it is explicit as to the number of yards that must be provided; and

WHEREAS, the Board notes that even though a zoning provision may require occasional interpretation if it is silent as to one aspect of how it should be applied, a plain language application may still be indicated as to other aspects; and

WHEREAS, thus, the Board concludes that DOB is entitled to interpret certain aspects of 23-47 where required even where it is bound by the plain meaning of the word “one”; and

WHEREAS, in sum, the Board finds that DOB appropriately applied 23-47 to the Permit application; and
THE PRIOR DECISION

WHEREAS, as noted above, the Prior Decision also presented the Board with an occasion to consider the application of 23-47 to an interior flag lot; and

WHEREAS, that case concerns an interior flag lot located at 47 Burgher Avenue in Staten Island, which has a shape very similar to the Owner’s Lot; and

WHEREAS, the owner of this flag lot applied to DOB for a permit to develop it with a two-family dwelling, which was to be located in the interior flag portion; and

WHEREAS, a 30’-0” rear yard was required pursuant to the underlying zoning district regulations; and

WHEREAS, the submitted plans did not reflect a 30’-0” rear yard on the near rear lot line, though one was reflected on the far rear lot line; and

WHEREAS, at the near rear lot line, the plans reflected a 16 ft. open area, extending from this lot line to the front wall of the proposed dwelling; and

WHEREAS, the permit was issued but later revoked; upon further review, DOB claimed that a full 30’-0” rear yard was required on the near rear lot line as well; and

WHEREAS, the owner’s architect asked for a reconsideration of the revocation, arguing that the applicable rear yard provision – 23-47 – did not require a second rear yard; and

WHEREAS, as reflected above, 23-47 reads in pertinent part: “one rear yard with a depth of not less than 30 feet shall be provided on any zoning lot”; and

WHEREAS, in sum and substance, as evidenced by the record for this matter, the architect argued that 23-47 did not require that a rear yard be provided along all rear lot lines; rather, because of the use of the word “one”, only one rear yard was required; and

WHEREAS, the DOB Staten Island Borough Commissioner at the time did not grant the reconsideration, and the owner appealed the decision to the Board, requesting that it reinstate the permit; and

WHEREAS, the Board granted the appeal, modified the DOB determination and reinstated the permit, without requiring the provision of a 30’-0” rear yard along the near rear lot line; and

WHEREAS, in its resolution, the Board stated that it made this decision on the basis “that the portion of the

building facing Burgher Avenue constitutes more than 10% of the perimeter of the building and that the area in front of the dwelling is considered a front yard”; and

WHEREAS, Appellants argue that DOB’s position as reflected in the record for the Prior Decision is evidence that prior to the instant appeals, DOB always required a rear yard along each and every rear lot line of a lot; and

WHEREAS, Appellants also argue that other DOB determinations reflected in the record further support the claim that DOB has always required a rear yard along all rear lot lines of an interior lot; and

WHEREAS, Appellants conclude that DOB may not now change its allegedly consistent interpretation that 23-47 provides for a rear yard along all rear lot lines of an interior flag lot; and

WHEREAS, Appellants cite to In the matter of Charles A Field Delivery Service, 66 N.Y.S.2d 516 (1985) in support of this argument; and

WHEREAS, in that case, the Court of Appeals examined the actions of the State’s Unemployment Insurance Appeals Board (the “UIAB”); and

WHEREAS, specifically, the Court reviewed the contention of a vendor that the UIAB rendered a determination as to it that was contrary to prior determinations, even though the facts present in the cases were identical; and

WHEREAS, the Court held that “absent an explanation by the agency, an administrative agency decision which, on essentially the same facts as underlaid a prior agency determination, reaches a conclusion contrary to the prior determination is arbitrary and capricious”; and

WHEREAS, Appellants argue that Field Delivery binds DOB, and that it should withdraw the Final Determinations and revoke the Permit; and

WHEREAS, Appellants’ reliance on Field Delivery is misplaced for two reasons; and

WHEREAS, first, the facts of Field Delivery are distinguishable from the facts here; and

WHEREAS, the Board observes that the Prior Decision, as evidenced by the outcome, constitutes a rejection of DOB’s position that a rear yard was required on both rear lot lines of an interior flag lot; and

WHEREAS, specifically, the Board modified the DOB final determination and granted the property owner’s appeal, reinstating a permit based on plans that did not reflect a complying rear yard at both rear lot lines; and

WHEREAS, the Prior Decision was binding upon DOB; and

WHEREAS, even if, as Appellants allege, DOB has consistently asked for a rear yard along every rear lot line of a flag-shaped lot, this would be contrary to the Prior Decision; and

WHEREAS, Appellants’ application of Field Delivery would therefore require DOB to once again ignore the Board and make a decision that is contrary to the Board’s guidance (and to zoning law, as established above) merely because it may have made a similar incorrect decision in other instances; and

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WHEREAS, the Board disagrees that Field Delivery should be applied in this manner, since that case did not present a similar fact pattern: there is no indicate that UIAB ignore binding precedent when it made its initial decisions; and

WHEREAS, further, Appellants application would eviscerate the Board's Charter-conferred authority to ensure that its past decisions are followed and to correct DOB errors that are contrary to zoning in the future; and

WHEREAS, the second reason why the Board finds that Appellants' reliance on Field Delivery is misplaced is because there is a scarcity of evidence that DOB has in fact consistently read 23-47 to require a rear yard on all rear lot lines of a interior lot; and

WHEREAS, while Appellants are adamant that DOB has consistently taken this position, the record reveals that this is not the case; and

WHEREAS, for instance, the Owner cites to development projects at 330 East 57th Street, Manhattan and 100 West Kingsbridge Road, Brooklyn, which involved lots with more than one rear lot line; and

WHEREAS, in neither instance did DOB determine that a rear yard was required along all rear lot lines; and

WHEREAS, accordingly, the Board finds that Appellants have not conclusively established that DOB has engaged in a consistent interpretation of 23-47 that is inconsistent with its position as reflected in the Final Determinations; and

WHEREAS, while the Board concludes that Field Delivery does not bind DOB to make a decision contrary to law, it does find that the case has some relevance to the instant appeals; and

WHEREAS, in fact, the Board observes that Field Delivery has more effect on the Board's decision as to the appeals than it does on DOB's determinations below; and

WHEREAS, in its opinion, the Court expressed its concern that the underlying facts of the UIAB determinations in question were very similar to the case at hand and thus held that "Comparison of the facts on the basis of which [the prior decisions] were decided with the facts of the instant case . . . makes evident, if not the impossibility of distinguishing this case from [the prior decisions], at least the existence of sufficient factual similarity between those cases and this to require explanation by the Board of why it reached a different result in this case; and

WHEREAS, the Board notes that the facts presented in the instant appeals are very similar to those presented in the Prior Decision: both cases concern an interior flag lot, and both require that the Board determine whether 23-47 requires a rear yard along all rear lot lines if there is development proposed in the flag portion of the lot; and

WHEREAS, given that the Board previously repudiated the contention that a rear yard must be provided on every rear lot line of a flag-shaped interior lot in the Prior Decision, Field Delivery suggests that if the Board were to now favor such a contention, an explanation must be provided; and

WHEREAS, since the Board agrees that the Prior Decision was correct insofar that it rejected this contention,

such an explanation is not fundamental; and

WHEREAS, nevertheless, while the Board views the Prior Decision as a refutation of the erroneous position that a rear yard is required along each rear lot line, it acknowledges that the resolution poorly expresses the rationale for the outcome; and

WHEREAS, further, the Board disagrees that the area between the front wall of a dwelling and a near rear lot line should be considered a front yard, as indicated by the prior Board, since this is contrary to the definition of "front yard" as set forth at Z.R. § 12-10 (though in passing it notes that even if such area were to be construed as a "front yard", this would not effect the Permit since there is no front yard requirement in an R8B district); and

WHEREAS, accordingly, the current Board finds it sensible to examine the facts at hand and the arguments made by Appellants, and explain in greater detail, as it has, why the outcome should be the same as occurred in the Prior Decision; and

WHEREAS, the Board finds that this comports with the holding of Field Delivery; and
THE 1982 MEMO

WHEREAS, the subject of the 1982 Memo is "Yards in Irregular Lots", and it attaches a sketch of a flag lot as an example; the goal of the 1982 Memo is to guide DOB's Borough Commissioners in reviewing such lots under particular circumstances; and

WHEREAS, DOB states, as reflected in the Final Determinations, that the 1982 Memo addresses circumstances where there is both adequate and inadequate building frontage, and directs the Borough Commissioners as to what yard regulations might apply to such lots; and

WHEREAS, DOB views the 1982 Memo as applying to buildings constructed on a flag-shaped lot where a significant portion of the building does not front on the street, but rather is behind an adjoining lot; and

WHEREAS, the sketch attached to the 1982 Memo confirms that this is the type of lot contemplated; and

WHEREAS, DOB states that in such cases, the 1982 Memo proposes that an additional yard must be provided along the near rear lot line, in addition to providing a rear yard along the far rear lot line of the zoning lot; and

WHEREAS, however, DOB, for the reasons stated in the Final Determinations, determined that the 1982 Memo does not apply to the Owner's Lot; and

WHEREAS, DOB also notes that it has relied upon the 1982 Memo to help interpret the ZR's rear yard requirements where an irregularly shaped lot is created to avoid compliance with zoning or to otherwise undermine the intent of the ZR; and

WHEREAS, Appellants claim that the 1982 Memo reflects an attempt by DOB to provide some guidance to the filing community and its staff as to how to apply the Prior Decision to interior lots with more than one rear lot line; and

WHEREAS, while Appellants have provided an affidavit from the author of the 1982 Memo in support of this claim, the Board finds that whether this is accurate or not is irrelevant; and

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WHEREAS, the Board observes that whatever the utility DOB has gained from its use of the 1982 Memo in the past, such a memo cannot modify or amend the ZR, a fact which DOB acknowledges; and

WHEREAS, additionally, at the first hearing, Appellants conceded that there was no authority for DOB to modify yard requirements as per the 1982 Memo; and

WHEREAS, in any event, Appellants do not propose that a smaller area be provided at the rear lot line, as would arguably be indicated if the 1982 Memo applied, but rather propose that another 30'-0" rear yard be provided, in compliance with their interpretation of 23-47; and

WHEREAS, thus, the Board agrees with all parties that the 1982 Memo is not applicable to the Owner's Lot; and

WHEREAS, that being said, the Board observes that as the 1982 Memo illustrates, DOB has struggled to find and maintain a consistent approach to rear yard questions when a zoning lot has more than one rear lot line; and

WHEREAS, accordingly, the Board suggests that DOB consult with DCP to formulate a solution to this problem that respects the ZR and modify the 1982 Memo accordingly or abandon it altogether; and

DISTINCTIONS BETWEEN PRE AND POST-1961 LOTS

WHEREAS, without intending any disrespect towards DOB, the Board is nevertheless troubled by the distinction the agency makes between pre and post-1961 flag-shaped zoning lots, as reflected in the Final Determinations; and

WHEREAS, specifically, as noted above, DOB takes the position that it may apply the reduced yard requirements set forth in the 1982 Memo "where an irregular shaped lot is created to avoid compliance with zoning or to otherwise undermine the intent of the Zoning Resolution"; and

WHEREAS, DOB indicates in the Final Determinations that it would not apply the 1982 Memo to lots with multiple rear lot lines that existed prior to December 15, 1961; and

WHEREAS, while the Board understands the intent behind DOB's application of the 1982 Memo under certain circumstances to post-1961 lots, the Board finds that DOB possesses no authority to ignore 23-47's requirement that only one rear yard is required, even if the policy goal is laudable; and

WHEREAS, thus, the Board again suggests that DOB confer with DCP to formulate a solution that addresses its concern about zoning lot manipulation; and

SECTION 27-291 OF THE BUILDING CODE

WHEREAS, Appellants' second primary argument is that DOB erred in waiving strict compliance with Building Code § 27-291 – "Frontage" (hereinafter "27-291"), which is a provision listed under Title 27, Subchapter 4, Article 2 (Building Access), Subarticle 1 (Fire Department Access); and

WHEREAS, Building Code § 27-291 reads "Every building, exclusive of accessory buildings, shall have at least eight percent of the total perimeter of the building fronting directly upon a street or frontage space. For the purposes of this section, building perimeter shall be measured at that story having the maximum enclosed floor area."; and

WHEREAS, as proposed to be enlarged, the townhouse

on the Owner's Lot will violate this provision; and

WHEREAS, the record reveals that the Owner's townhouse, subsequent to the Enlargement, would have at total perimeter of 293'-0", which, pursuant to 27-291, would mean that the townhouse would need to have at least 23'-5" of frontage on East 83rd Street (it only has 18'-5"); and

WHEREAS, DOB issued a reconsideration during its review of the Permit application, which in effect waived strict compliance with 27-291 provided that sprinklering be installed; and

WHEREAS, DOB states that this waiver was proper, citing to its authority to waive Building Code provisions as established by the City Charter and the Building Code; and

WHEREAS, specifically, City Charter § 645(b)(2) (hereinafter, "645") reads, in pertinent part, "where there is a practical difficulty in the way of carrying out the strict letter of any provision of law relating to buildings in respect to the use of prescribed materials, or the installation or alteration of service equipment, or methods of construction and where equally safe and proper materials or forms of construction may be employed in a specific case, he may permit the use of such materials or of such forms of construction, provided that the spirit of the law shall be observed, public safety secured and substantial justice done, but he shall have no power to allow any variance from the provisions of any law in any respect except as expressly allowed therein . . ."; and

WHEREAS, Building Code § 27-107 – Variations (hereinafter, "27-107") reads, in pertinent part "The requirements and standards prescribed in this code shall be subject to variation in specific cases by the commissioner . . . under and pursuant to the provisions of [645] . . ."; and

WHEREAS, Appellants contend that: (1) DOB lacks authority to waive 27-291; and (2) even if DOB does possess authority to waive this provision, no practical difficulties have been proven by the Owner, and public safety has not been secured through the reconsideration; and

WHEREAS, as to the first argument, Appellants contend that DOB's ability to waive Building Code provisions, while provided for by the City Charter and the Building Code, is severely constricted and does not extend to 27-291; and

WHEREAS, more specifically, Appellants claim that only Building Code provisions that contain distinct and separate language noting that the provision may be waived are subject to waiver by DOB; and

WHEREAS, in a submission dated September 22, 2006, Appellants argue that only two provisions of the Building Code provide this separate language by citing specifically to 27-107: Building Code § 27-860, concerning the construction of adjoining chimneys, and Building Code 27-889, concerning the construction of adjoining gas vents; and

WHEREAS, thus, Appellants argue that notwithstanding all of the provisions within the Building Code that concern materials, equipment and forms and methods of construction, only two may be waived by DOB; and

WHEREAS, the Board disagrees, and observes that a review of the applicable City Charter and Administrative Code sections reveals that there is no basis for Appellants' position; and

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WHEREAS, first, the Board observes that 27-107 satisfies the requirement in 645 that the laws which DOB can vary must contain an explicit allowance that its provisions may be waived; and

WHEREAS, second, DOB argues, and the Board agrees, that neither the Building Code nor the City Charter require that there be an additional reference to DOB's ability to waive a particular provision within such a provision itself; and

WHEREAS, that this occurs in certain provisions, as pointed out by Appellants, is not an indication that this is required to give DOB authority to issue a variance; rather, this authority comes from the 645 and 27-107; and

WHEREAS, further, the Board notes that the phrase "specific cases" as used in 27-107 refers to instances where a practical difficulty exists in meeting a Building Code provision that concerns materials, equipment or forms or methods of construction, not to specific Building Code provisions; and

WHEREAS, Appellants make the additional argument that 27-291 does not concern "the use of prescribed materials, or the installation or alteration of service equipment, or methods of construction", which covers the scope of what may be waived by DOB pursuant to 645; and

WHEREAS, however, DOB argues that whether a building is constructed in such a way that it complies with the frontage requirement of 27-291 or is fully sprinklered falls squarely under the terms "form of construction" or "method of construction"; and

WHEREAS, the Board notes that Building Code § 27-232 defines the word construction as follows: "Any or all work or operations necessary or incidental to the erection, demolition, assembling, installing, or equipping of buildings, or any alterations and operations incidental thereto. The term 'construction' shall include land clearing, grading, excavating, and filling. It shall also mean the finished product of any such work or operations"; and

WHEREAS, this definition is very broad and can reasonably apply to the amount of building frontage that must be provided during construction or whether sprinklers should be installed instead; and

WHEREAS, while the words "method" and "form" are not defined, Building Code § 27-229 provides, in pertinent part "Where terms are not defined they shall have their ordinarily accepted meanings or such as the context may imply."; and

WHEREAS, thus, DOB is at liberty to apply a reasonable definition of a term, and may take into account the context in which said definition is applied; and

WHEREAS, here, DOB construes the word "method" or "form" to mean how Fire Department access is either provided during construction (i.e. through the provision of required frontage), or a means or mechanism of achieving the same goal through alternate construction (i.e. sprinklering); and

WHEREAS, the Board finds that this is a reasonable approach to the application of the terms "method of construction" or "form of construction", and observes that the frontage requirement does not exist in a vacuum but depends

upon a new building being constructed or an existing building being enlarged before it is necessary to apply it; and

WHEREAS, further, the Board notes that DOB has historically proceeded under this approach when reviewing permit applications, and has utilized 645 to frequently waive Building Code requirements related to egress, as well as other provisions that involve methods or forms of construction; and

WHEREAS, accordingly, the Board finds that deference should be accorded to DOB's application of 645 and 27-107, especially since it comports with the plain language of these provisions; and

WHEREAS, for the above reasons, the Board finds that DOB possesses the authority to waive or modify 27-291; and

WHEREAS, as noted above, Appellants argue that even if DOB possesses such authority, the Owner offered no proof of practical difficulties, nor did DOB ensure that public safety is secured in its reconsideration; and

WHEREAS, the Board disagrees: the Owner's Lot is not capable of being widened in order to create more frontage, yet the Lot still generates sufficient floor area such that the Enlargement can be built; and

WHEREAS, absent a waiver of 27-291, the Owner cannot construct the Enlargement in the flag portion of the lot, which is the obvious location to construct the Enlargement, since it a large vacant area that is easily developed; and

WHEREAS, a vertical addition to the existing townhouse utilizing available floor area would greatly increase the building height, resulting in a home that would be out of scale with its neighbors; and

WHEREAS, finally, the Board rejects Appellants' argument that the practical difficulty standard as set forth in 645 must be applied in the same manner as ZR § 72-21; and

WHEREAS, there is no support for the contention that DOB should require that the findings of ZR § 72-21 must be met when issuing a Building Code waiver, or even for the contention that ZR § 72-21 should inform how DOB applies 645; and

WHEREAS, 645 does not require findings related to uniqueness, character of the neighborhood, or minimum variance, and does not impose a self-created hardship caveat; and

WHEREAS, in fact, this Board has previously determined that in the context of Building Code waivers, the personal development goals of the property owner can serve as a component of the practical difficulty claim; and

WHEREAS, specifically, under BSA Cal. No. 174-05-A, an appeal involving the Western Union Building at 60 Hudson Street, Manhattan, the Board found that "unlike a zoning variance, where physical uniqueness related to the parcel of land itself is usually required, the business needs of the owner of the premises and the existing built conditions can properly be considered [for a Building Code waiver], especially where, as here, such needs intersect with pre-existing physical constraints related to the building itself . . . in fact, since a Building Code waiver will almost always relate to a proposed building form, construction method or a proposed occupancy, it is difficult to

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envision a practical difficulty that would not in some way relate to the particular needs of the building owner or business occupying the building . . . thus, the Board finds that where compliance involves a practical engineering difficulty and imposes a related financial burden that is unnecessary in light of a sufficiently safe alternative, the Charter and Code provide DOB with authority to waive or modify compliance”; and

WHEREAS, similarly, the Board finds that a Building Code waiver can be predicated on the combination of an otherwise as of right development goal and the physical constraints of the lot; and

WHEREAS, here, the Owner established that its street frontage was constrained by its lot dimensions and could not be enlarged, and that the Enlargement could not be constructed at the rear of the existing townhouse utilizing available floor area without a waiver of 27-291; and

WHEREAS, as to whether safety has been secured, Appellants argue that notwithstanding the sprinklering requirement imposed by DOB, the presence of the Enlargement approximately three and half feet away from the rear of Appellant 2’s townhouse poses a fire safety hazard that cannot be mitigated; and

WHEREAS, the Board also finds that this argument is without merit; and

WHEREAS, first, the Board observes that during the course of the hearing process, FDNY reviewed the proposal and performed a site inspection, and determined that so long as the entire building was fully sprinkled, it had no objections; and

WHEREAS, while testimony was provided by Appellants in opposition to this conclusion, the Board defers to the official position of FDNY, the City agency charged with advancing public safety through its fire prevention programs; and

WHEREAS, since the Owner’s townhouse, as enlarged, will be fully sprinklered, FDNY could reasonably conclude that its firefighting access concerns are addressed by this additional safety measure and that there would be no danger to adjacent buildings; and

WHEREAS, the Board also observes that the shortfall in required frontage is only approximately five feet; and

WHEREAS, thus, the Board agrees that so long as the entire building shall be fully sprinklered, safety is secured notwithstanding the waiver of 27-291; and

WHEREAS, additionally, the Board notes that it routinely approves the waiver of 27-291 on condition of sprinklering in the context of applications made under the General City Law where the subject property’s frontage on a street is deficient or even non-existent, with grants only being made if FDNY approves of the proposal; and

WHEREAS, thus, the decisions made by DOB and FDNY as to the Owner’s Lot parallel those made by the Board and FDNY as to numerous other developments across the City, where sprinklering has been found to secure safety in lieu of compliance with 27-291; and

WHEREAS, in sum, the Board finds that DOB possesses the authority to waive 27-291 and that this authority was properly exercised as to the Permit and the Enlargement; and

WHEREAS, accordingly, it rejects Appellants’ second primary argument; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments made by Appellants in light of the entire record and finds that they are without merit; and

WHEREAS, accordingly, it upholds DOB’s issuance of the Permit, as conditioned below.

Therefore it is Resolved that the instant appeals, seeking a reversal of the determinations of the Borough Commissioner of the Department of Buildings, dated April 7, 2006 and April 24, 2006, refusing to revoke the issuance of DOB Permit No. 10153229 is hereby denied, on condition that the building proposed to be enlarged under Permit No. 10153229 must be fully sprinklered as per FDNY requirements.

Adopted by the Board of Standards and Appeals, December 5, 2006.

174-06-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for PSCH, owner.

SUBJECT – Application August 11, 2006 – Proposed construction and enlargement of a community facility (PSCH) located within the bed of mapped street (119th Street) is contrary to Section 35 of the General City Law. M1-1 Zoning District

PREMISES AFFECTED – 22-44 119th Street, northwest corner of 23rd Avenue and 119th Street, Block 4194, Lot 20, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 13, 2006, acting on Department of Buildings Application No. 401963586, reads in pertinent part:

“The proposed construction within the bed of a mapped widening is contrary to Article 3, Section 35 of the General City Law and must be referred to the Board of Standards and Appeals.”; and

WHEREAS, a public hearing was held on this application on December 5, 2006, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, Community Board 7, Queens, recommends approval of the application; and

WHEREAS, the subject site is located in an M1-1 zoning district; and

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WHEREAS, the applicant proposes to enlarge an existing not-for-profit office use of which, would result in approximately ten feet of the building being located within the mapped widening line of 119th Street; and

WHEREAS, on February 14, 2006, under BSA Cal. No. 386-04-BZ, the Board granted a special permit for a waiver to the required amount of accessory parking; and

WHEREAS, the Board notes that the applicant was then required to seek site plan approval from the City Planning Commission (CPC); and

WHEREAS, the applicant also needed approval from CPC relating to waterfront development, including certification for the proposed public access and waivers of waterfront height and yard regulations; and

WHEREAS, during CPC review, it was discovered that the development also required GCL relief from this Board; thus, the instant application was filed; and

WHEREAS, by letter dated October 23, 2006, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated October 18, 2006, the Department of Transportation states that it has reviewed the application and has no objections; and

WHEREAS, based on the above, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 13, 2006, acting on Department of Buildings Application Nos. 401963586 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received October 4, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT no permits shall be issued prior to CPC review and approval of the site plan, and certification relating to waterfront development;

THAT any modifications to the BSA-approved plans, subsequent to CPC review, must be approved by the Board prior to issuance of any permits;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2006.

273-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary Ellen & Joseph Duggan, lessees.

SUBJECT – Application October 11, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law. R-4 zoning district. PREMISES AFFECTED – 113 Beach 221st Street, east side of Beach 221st Street, 240' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 29, 2006, acting on Department of Buildings Application No. 4024441853, reads in pertinent part:

- “A1- The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, therefore:
- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
 - b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on December 5, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated October 17, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 29, 2006, acting on Department of Buildings Application No. 4024441853 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received October 11, 2006 – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2006.

337-05-A

APPLICANT – Adam W. Rothkrug, Esq., for Adragna Realty, LLC, owner.

SUBJECT – Application November 23, 2005 – An Appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R4 zoning district. Premises is located in a R4-A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, between Morris Park Avenue and Van Nest Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Michael R. Treanor and Jenice Toledo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

117-06-A

APPLICANT – Eric Palatnik, P.C., for Esther C. Wallerstein, owner.

SUBJECT – Application June 8, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 1373 East 13th Street, between Avenue N and Elm Avenue, Block 6742, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Adam Rothkrug.

For Administration: Amanda Derr, Department of Buildings

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for decision, hearing closed.

154-06-A

APPLICANT – Cozen O’Connor Attorneys, Flan Realty, LLC, owner.

SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.

PREMISES AFFECTED – 357 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown.....3

Abstain: Commissioner Hinkson.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

155-06-A

APPLICANT – Cozen O’Connor Attorneys, Flan Realty, LLC, owner.

SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.

PREMISES AFFECTED – 359 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown.....3

Abstain: Commissioner Hinkson.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING

TUESDAY AFTERNOON, DECEMBER 5, 2006

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

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ZONING CALENDAR

165-05-BZ

CEQR #06-BSA-004K

APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.

SUBJECT – Application July 25, 2005 – Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.

PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156'-3" East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jeffrey Chester.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 21, 2005, acting on Department of Buildings Application No. 301867934, reads in pertinent part:

“A residential use in a M1-1 zoning district is contrary to Section 42-00 ZR and must be referred to the Board of Standards & Appeals.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a four-story and cellar residential building, which is contrary to ZR § 42-00; and

WHEREAS, the proposed building will have a total floor area of 20,602 sq. ft. (1.99 FAR), a street wall height of 30'-0" with a 15'-0" setback, a total height of 40'-0" (not including bulkheads), a rear yard of 30'-0", 31 dwelling units, and 15 parking spaces (the “Proposed Building”); and

WHEREAS, the applicant initially proposed to construct a four-story building with 22,609 sq. ft. of floor area (2.2 FAR), a street wall height of 39'-8", and a total height of 66'-0" (including the attic space); and

WHEREAS, the Board expressed concern about this proposal, noting that the inclusion of attics and mezzanines added height and gave the appearance of a seven-story building; and

WHEREAS, the Board suggested to the applicant that the initially proposed height and bulk would not be compatible with the character of the community, given the heights of the surrounding buildings, and that the amount of FAR did not appear to be economically justified; and

WHEREAS, subsequently, the applicant submitted intermediate proposals, which reflected the elimination of the mezzanines and attics and a reduction in height and floor area; and

WHEREAS, the intermediate proposals also reflected

variations on the interior layouts and locations of the bulkhead; one version included the designation of the cellar space as community facility; and

WHEREAS, the Board directed the applicant to eliminate the community facility designation of the cellar as it was actually individual space connected to individual apartments, resulting in additional residential floor area; thus, it could not be characterized appropriately as community facility space; and

WHEREAS, the Board also expressed concern about the significant amount of floor area deductions identified in the plans, including those allegedly allowed due to the provision of Quality Housing features and mechanical space; and

WHEREAS, the applicant responded to the Board's concerns by submitting revised plans, which eliminate reference to the Quality Housing program and which reflect a reasonable amount of mechanical deductions, as well as the elimination of the purported community facility space; and

WHEREAS, while the Board finds the current version acceptable in terms of impact and compatibility with the surrounding context, it will require as a condition of this grant that DOB review the plans and all deductions reflected therein (as well as other zoning and Code requirements) prior to the issuance of any building permit; and

WHEREAS, a public hearing was held on this application on May 16, 2006 after due notice by publication in the *City Record*, to continued hearings on August 15, 2006 and September 26, 2006, and then to decision on December 5, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 8, Brooklyn, recommends approval of the application on condition that a total of four units be reserved for affordable housing and that there be a specific process for selecting tenants for the affordable housing units; and

WHEREAS, the Board notes that the applicant agreed to this condition, but that the agreement between the applicant and the Community Board is beyond the scope of this variance; and

WHEREAS, the subject premises includes four tax lots (Lots 76-69) proposed to be merged (into Tentative Lot 78), has a width of 93'-9", a depth of 110'-0", a total lot area of 10,313 sq. ft., and is located on the north side of Bergen Street between Grand Avenue and Classon Avenue; and

WHEREAS, the site is currently occupied by a parking lot, but was previously occupied by residential uses; and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, the instant variance application for use was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is located in the midblock along a narrow street; (2) the adjacency of residential use on both sides of the site; and (3) there is a history of residential use at the site; and

WHEREAS, as to the location of the site in the midblock

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along a functionally one-lane street, the applicant noted that the street is 40 feet curb to curb (70 feet wide including sidewalks); and

WHEREAS, further, the applicant notes that the 15 ft. sidewalks on both sides of the street are encroached upon by front yards and other obstructions; and

WHEREAS, the applicant represents that these limitations constrain vehicle access to the site and truck loading for a conforming use; and

WHEREAS, in support of this representation, the applicant submitted a study from Urbitran, which included a graphic analysis of a standard 45-ft. truck turning into the site; the study indicates that the truck would not be able to access the site due to the narrow width of the street and the obstruction of the cars parked on both sides of the street; the study concludes that a 55-ft. truck would have to drive over the curb when exiting the site; and

WHEREAS, the Board reviewed the study and agrees that the midblock location, the curb to curb width, the wide sidewalks and the parking on both sides of the street all constrain truck access to the site; and

WHEREAS, as to the adjacent uses, the applicant represents that there are residential uses on both sides of the subject site, with a four-story multi-dwelling building to the east and a group of three three-story dwellings to the west; and

WHEREAS, the applicant asserts that the adjacent residential uses compromise access to the site and its marketability for a conforming use; and

WHEREAS, the Board agrees that the long-standing adjacent residential uses compounds the hardship associated with the site's midblock location on a narrow street; and

WHEREAS, as to the history of uses at the site, the applicant represents that prior to 1920, all of the subject lots were developed with residential buildings, which were all demolished between 1965 and 1979; and

WHEREAS, the applicant represents that the lots have remained vacant since that time; and

WHEREAS, as to uniqueness, the applicant represents that other sites in the area are more viable for conforming uses or have opportunities to be used or assembled with adjacent conforming uses; and

WHEREAS, additionally, the applicant asserts that the street is narrower than a number of the other streets in the subject M1-1 zoning district; and

WHEREAS, in support of these representations, the applicant initially submitted a land use study which included all sites within a 400-ft. radius of the site; and

WHEREAS, however, at hearing, the Board asked the applicant to reinforce the argument that the cited conditions were reasonably unique to the subject site, and to review an expanded study area that includes the nearby blocks, six of which are zoned M1-1 and two of which are zoned R6; and

WHEREAS, in response, the applicant studied an expanded area and analyzed other vacant or underdeveloped lots; this area includes a total of eight blocks bounded by Atlantic Avenue, Classon Avenue, Washington Avenue and St. Marks Avenue, as reflected on the submitted revised land use maps, generated by Urbitran; and

WHEREAS, the Urbitran map illustrates that other conforming uses predominantly occupy larger lots; and

WHEREAS, specifically, there are approximately 11 other vacant or underdeveloped lots in the study area including the subject lot; however, the other lots within the study area either have corner locations with greater access or are not adjacent to residential uses on either side, as the subject site is; and

WHEREAS, the Board notes that even within the 400-ft. radius, the subject site is one of only three lots in the underlying M1-1 zoning district that is of comparable size, located in the midblock and further burdened by adjacency to two residential uses; and

WHEREAS, finally, the Board observes that the merger of the four lots results in a sufficient lot size that would normally be able to accommodate conforming uses; however, given the above-noted constraints, the applicant would not be able to achieve a reasonable return if the site was developed with a conforming building; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, initially, the applicant submitted a feasibility study analyzing a conforming 10,313 sq. ft. garage building; and

WHEREAS, the applicant concluded that the garage scenario would not realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is a mix of residential, commercial, and manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including the adjacent residential buildings and others on the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of 31 dwelling units and 15 accessory parking spaces will not impact nearby conforming uses nor negatively affect the area's character; and

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WHEREAS, further, the Board notes that the earlier iterations would not have been contextual with the surrounding neighborhood, which is characterized by three- and four-story residential buildings adjacent to the site, and predominantly three to four-story residential buildings in the immediate area; and

WHEREAS, specifically, at hearing, the Board asked the applicant to remove the initially proposed mezzanines and attic spaces because these spaces increased the floor area significantly and because the building had the appearance of a seven-story building, rather than a four-story building; and

WHEREAS, the Board notes that the proposal has been reduced in terms of FAR and height, which makes it much more compatible with the surrounding context; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed a 22,609 sq. ft. (2.2 FAR) building with a significant amount of deductions; and

WHEREAS, in response to the Board's concerns, the applicant proposed the current version of the building, which the Board finds acceptable; and

WHEREAS, the Board notes that the initial feasibility study included a discounted value for the affordable housing units; and

WHEREAS, while the Board notes that the applicant may agree to provide affordable units and it may be a worthy cause, this condition should not be reflected in the feasibility analysis for the proposed project; and

WHEREAS, specifically, the Board notes that the costs associated with affordable units should not be offset by an increase in floor area; and

WHEREAS, the applicant revised the feasibility study to address this concern; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA004K, dated April 7, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: the 2005 EAS and the March 2005 Phase I Environmental Site Assessment Report; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on October 30, 2006 and submitted for proof of recording on November 3, 2006 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, a four-story and cellar residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 4, 2006" – (8) sheets; and *on further condition*:

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the following are the bulk parameters of the building: four stories, 20,602 sq. ft. of floor area (1.99 FAR), a street wall height of 30'-0" with a 15'-0" setback, a total height

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of 40'-0" (not including bulkheads), a rear yard of 30'-0", 31 dwelling units, and 15 parking spaces, all as indicated on the BSA-approved plans;

THAT prior to the issuance of any building permit, DOB shall perform an audit of the BSA-approved plans to confirm compliance with all ZR and Building Code provisions not waived herein, including, but not limited to, floor area deductions, the width and slope of the vehicle ramp, handicapped access, egress, access between the cellar and first floor, parking layout and circulation, bulkheads and rooftop obstruction, light and air, and apartment layout;

THAT any non-compliance identified in this audit must be resolved prior to the issuance of a building permit;

THAT cellar spaces connected to residential units shall not be used for living/sleeping purposes; such spaces shall be used for tenant recreational or storage purposes only;

THAT any handicapped-accessible lift shall be approved by the Mayor's Office for People with Disabilities;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2006.

363-05-BZ

CEQR #06-BSA-043Q

APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.

SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. §72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. §§23-141, 23-45(a), 23-462(a), 23-861, and 25-23.

PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Hirshman and Amy Klet.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 20, 2006, acting on Department of Buildings Application No. 402224838, reads, in pertinent part:

“- 23-141 ZR – Proposed development is exceeding the maximum floor area ratio allowed on this zoning lot.

- 23-141 ZR – Proposed lot coverage is exceeding the maximum allowed.

- 23-141 ZR – Proposed development is not providing the minimum required open space.

- 23-45(a) ZR – Portion of new enlargement is not a permitted obstruction in required front yard.

- 23-462(a) ZR – For proposed development the aggregate width of street walls is greater than 88' therefore two side yards are required. Side yards must be at least 10% of the aggregate width of street walls as per section 23-462(a). Plans submitted indicate that width of side yards provided are not sufficient.

- 23-861 ZR – Proposed development with more than three dwelling units must be provided with legally required windows as per section 23-861 ZR. A minimum dimension of thirty feet must be provided between window and side/rear lot line.

- 25-23 ZR – New development must be provided with the required amount of parking spaces as per section 25-23 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5 zoning district, two semi-detached three-story three-family residential buildings with three accessory parking spaces, which do not comply with the requirements concerning total maximum floor area ratio (FAR), lot coverage, open space, front yard, side yards, distance between window and lot lines, and parking spaces, contrary to ZR §§ 23-141, 23-45, 23-462, 23-861, and 25-23; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in the *City Record*, with continued hearings on September 12, 2006, October 17, 2006, and November 14, 2006, and then to decision on December 5, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan; and

WHEREAS, Community Board 4, Queens, recommends disapproval of the application, citing community members' concerns about permitting new multi-unit dwellings in the area, parking, and potential negative impacts on neighboring homes' access to light and air; and

WHEREAS, the subject premises is located on the southeast corner of 108th Street and Westside Avenue; and

WHEREAS, the lot is an irregularly-shaped and shallow site, with 103'-1" of frontage on 108th Street, 50'-0" of frontage on Westside Avenue, and a total lot area of 3,987 sq. ft.; and

WHEREAS, the site is currently improved upon with a one-story commercial building (proposed to be demolished) and six accessory parking spaces; and

WHEREAS, on October 31, 1961, under BSA Cal. No. 777-61-BZ, the Board, under Section 7e of the pre-1961 zoning code, granted a permit to allow a change in occupancy of an existing one-story building from a three-car garage to a restaurant with six accessory parking spaces; and

WHEREAS, in 1984, under BSA Cal. No. 435-84-BZ, the

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Board granted additional floor area for an accessory office to the restaurant; and

WHEREAS, because of the size of the block and the fact that more than 50 percent of the zoning lots therein are developed with buildings, the site is within an area which can be defined as predominantly built-up, per ZR § 12-10 ("Predominantly built-up area"); and

WHEREAS, the applicant now proposes to construct two semi-detached three-story three-family homes with a total residential floor area of 7,304 sq. ft., (6,578 sq. ft. is the maximum permitted), a total FAR of 1.83 (1.65 is the maximum permitted), a lot coverage of 61 percent (55 percent is the maximum permitted), and an open space ratio of 39 percent (45 percent is the minimum required); and

WHEREAS, the proposed building will have no front yards (front yards with a minimum depth of 18'-0" are required), one irregularly-shaped side yard, built to the lot line at points and to a maximum width of 11'-0", and another irregularly-shaped side yard, built to the lot line at points and to a maximum width of 18'-0" (side yards with a total width of 13'-0" and a minimum width of 5'-0" for one yard are the minimum required), and three parking spaces (four parking spaces are required); and

WHEREAS, the applicant notes that the following are unique physical conditions, which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the irregular shape of the lot (2) the shallow depth of the lot, and (3) the large amount of street frontage; and

WHEREAS, as to the irregular shape, the applicant states that the lot has a zigzag shape with many angles; and

WHEREAS, the applicant asserts that the lot shape results in the following consequences: (1) an increase in construction costs, because a complying building would be irregularly shaped; and (2) inefficient floor plates for residential use, and a corresponding decrease in the value of the units; and

WHEREAS, the applicant represents that additional floor area is needed to recover the costs of the construction and to create units that are marketable given the constraints of the site; and

WHEREAS, additionally, the applicant represents that additional floor area is needed to meet code requirements for minimum room size and to make efficient layouts given the irregular shape of the building; and

WHEREAS, this increase in floor area also creates an increase in lot coverage; and

WHEREAS, the applicant represents that if a greater distance were provided between all walls and lot lines, the footprint would be diminished greatly; and

WHEREAS, the applicant also notes that light and ventilation can be accessed from smaller yards for small multi-dwelling buildings such as the ones proposed; and

WHEREAS, as to the uniqueness of the shape of the lot, the applicant submitted a 400-ft. radius diagram, which reflects that there are not any other lots in the area with as many lot lines; and

WHEREAS, the Board reviewed the submitted diagram and agrees that the subject lot is the only one within the radius with such an irregular shape; and

WHEREAS, as to the shallow depth, the applicant states that the lot ranges in depths from 22'-0" to 44'-0" perpendicular to 108th Street; and

WHEREAS, the applicant represents that the shallowness, along with the irregular shape, contributes to the need for additional lot coverage and diminished open space; and

WHEREAS, the applicant also represents that the shallowness, like the shape, contributes to additional construction costs; and

WHEREAS, the Board notes that there are only approximately nine other lots within the radius that are as shallow as the subject lot; and

WHEREAS, as to the street frontage, the applicant asserts that the lot has an unusually large amount of street frontage in relation to the size of the lot; and

WHEREAS, the Board notes that no other lots within the radius diagram have as much street frontage as the subject lot; and

WHEREAS, the applicant represents that the yard requirements associated with the amount of street frontage cannot be accommodated on such a shallow, irregular lot; and

WHEREAS, further, the applicant represents that given the noted site conditions, an additional parking space and more open space are not feasible; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as of right two three-story three-family development with a floor area of 6,376 sq. ft. (1.65 FAR), (2) the proposed two three-story three-family development with a floor area of 7,304 sq. ft. (1.83 FAR), and (3) lesser variance proposal with a complying 1.65 FAR, but with waiver requests for yards and lot coverage; and

WHEREAS, the applicant asserts that the as of right scenario would not provide a sufficient rate of return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is comprised primarily of two- and three-story residential buildings; and

WHEREAS, the applicant notes that a 5'-0" yard will be provided along the portions of the buildings where legal light and ventilation are accessed; and

WHEREAS, the Board notes that the adjacent building to the east is a three-story multiple-unit dwelling with no windows facing the site; and

WHEREAS, additionally, the Board notes that open space will be provided between the proposed building and the residential buildings at the rear either through an open parking area or the adjacent rear yards; and

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WHEREAS, as to the parking, the applicant notes that parking will be provided for half of the dwelling units and that a waiver is only requested for one space; and

WHEREAS, the Board agrees that any adverse impact as a result of the parking request is negligible; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents that the hardship was not created by the owner or a predecessor in title, but that the irregular shape of the lot is the result of the City's street design; and

WHEREAS, specifically, the streets that intersect 108th Street do so at an angle, which has resulted in the irregularly-shaped subject lot; and

WHEREAS, further, the applicant represents that in 1922, the City opened a mapped street across the adjacent lot (Westside Avenue), which created an irregular intersection at the subject site and resulted in another 50'-0" of street frontage; and

WHEREAS, based on the above, the Board agrees that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal is the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA043Q, dated December 16, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as

stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit on a site within an R5 zoning district, two semi-detached three-story three-family residential buildings with three accessory parking spaces, which do not comply with the requirements concerning total maximum FAR, lot coverage, open space, front yard, side yards, distance between window and lot lines, and parking spaces and is contrary to ZR §§ 23-141, 23-45, 23-462, 23-861, and 25-23; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 2, 2006"-- (4) sheets, "Received October 31, 2006"--(1) sheet and "Received November 28, 2006"--(2) sheets; and *on further condition*:

THAT the parameters of the development shall be: a total floor area of 7,304 sq. ft. (1.83 FAR), a total height of 30'-0", a lot coverage of 61 percent, an open space ratio of 39 percent, and a minimum of three parking spaces;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2006.

130-06-BZ

APPLICANT – Anderson Kill & Olick, P.C., for Amsterdam Nursing Home Corp., owner.

SUBJECT – Application June 22, 2006 – Variance pursuant to Z.R. §72-21 to permit a one-story addition in the rear yard of an existing nursing home. The Premise is located in R8 and R8/C1-4 zoning districts. The proposal is contrary to Z.R. §24-33(b)(3). The rear yard proposed for the addition is currently vacant.

PREMISES AFFECTED – 1060 Amsterdam Avenue, West side of Amsterdam Avenue between 112th and 113th Streets, Block 1884, Lots 29, 36, Borough of Manhattan.

COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Robert Cook.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....

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0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 23, 2006, acting on Department of Buildings Application No. 104067670, reads, in pertinent part:

“The proposed nursing home use (on first floor) in a R8 zoning district located more than 100 feet beyond corner of the street is not a permitted obstruction and is contrary to ZR 24-33 b (2) and (3)”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R8 zoning district and partially within a C1-4(R8) zoning district, a one-story enlargement in the rear yard of an existing nursing home, which is contrary to ZR § 24-33; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, and then to decision on December 5, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 9, Manhattan, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Amsterdam Nursing Home (the “Home”), a nonprofit institution; and

WHEREAS, the site is L-shaped and comprises two tax lots, located on the west side of Amsterdam Avenue, between West 112th Street and West 113th Street, with frontage on all three streets; and

WHEREAS, the subject site is within an R8 zoning district for the westernmost 100 feet along West 112th Street; the remainder of the site is within an R8 zoning district with a C1-4 overlay; and

WHEREAS, the subject site has a lot area of 26,238.75 sq. ft. and is improved upon with a 13-story and one-story 168,086 sq. ft. nursing home building, which accommodates 409 residents, and an adult day care center; and

WHEREAS, in 1992, the Home was granted permission to build an addition to the existing facility on the newly-acquired adjacent site on the southwest corner of Amsterdam Avenue and West 113th Street (tax lot 36); and

WHEREAS, the applicant represents that the proposed enlargement was designed to achieve efficient floor plates and to modernize the Home’s facilities; and

WHEREAS, the Home also renovated an existing building on the newly-acquired lot and created the day care center; and

WHEREAS, the approvals necessary to construct the 1992 enlargement included: (1) a City Planning Commission special permit to permit the community facility floor area (6.5 FAR) to apply to the enlargement; (2) a disposition of city-owned property to the nursing home; (3) an amendment to the Cathedral Parkway Urban Renewal Plan to permit a nursing home on the acquired property; and (4) a City Planning Commission certification regarding community facility development within the subject Community District; and

WHEREAS, the applicant states that when the enlargement of the Home was built, a portion of the rear yard at the western end of the building was filled in with a 14-foot high

structure, leaving an approximately 69-foot wide open area between that structure and the new wing fronting on Amsterdam Avenue; and

WHEREAS, the applicant represents that as part of the enlargement and renovation plan to be carried out pursuant to the 1992 proposal, the Home had planned to fill in the remainder of the rear yard with a one-story, 14-foot high addition; and

WHEREAS, this portion of the enlargement would have been as-of-right under then existing zoning as a permitted obstruction of one story and less than 23 feet in height in the rear yard of a community facility building; and

WHEREAS, the applicant represents that due to budgetary constraints, this part of the planned enlargement was never built; and

WHEREAS, the applicant notes that in 2004 there was a text amendment to ZR § 24-33 related to community facility use, which now permits limited rear yard encroachments only if located within 100 feet of the intersection of a wide street; exceptions include schools, hospitals, and houses of worship are except, but not nursing homes; and

WHEREAS, therefore, the westernmost portion (28 feet) of the proposed rear yard addition is not permitted as it is more than 100 feet from Amsterdam Avenue; and

WHEREAS, the applicant now proposes to build the one-story addition into the 32 ft. deep open space in the rear yard; and

WHEREAS, the applicant only requires a waiver for the 28 ft. by 32 ft. (896 sq. ft.) portion of the enlargement that will be located within the R8 portion of the site; the remainder of the enlargement is within 100 feet of the intersection where the community facility use is a permitted obstruction; and

WHEREAS, the enlargement complies with all the approvals of the 1992 proposal, and the enlarged building would still be within the previously-approved 6.5 FAR; and

WHEREAS, the applicant represents that an approval from the City Planning Commission is being sought for the modification of the previously-approved site plan to permit the rear yard obstruction; and

WHEREAS, the applicant proposes to build the one-story 2,462 sq. ft. enlargement and to move mechanical equipment now located on the roof of the existing portion of the building in the rear yard to the roof of the 13-story portion of the building; and

WHEREAS, the proposed enlargement will contain new facilities for residents’ activities and allow for a reorganization of the Home’s first floor services, which will permit the admissions office in the cellar to be relocated to the first floor; and

WHEREAS, the applicant states that the following are the programmatic space needs of the Home, which have led to the proposal to construct the one story addition: (1) a need to provide a common space for residents to interact with others and attend instructional programs; (2) a need to provide a more accessible admissions office; and (3) a need to enlarge the adult day care program, which operates at full capacity; and

WHEREAS, in order to meet these needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the rear yard

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waiver is necessary to complete the proposed plans and to create efficient use of the first floor for common space, the day care program, and to allow for the relocation of the admissions office; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the enlargement and redesign of the first floor is necessary to address the Home's needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site, when considered in conjunction with the programmatic needs of the Home, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Home is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant states that the enlargement will be located in the rear yard where it is not visible from the street; and

WHEREAS, further, the applicant states that the enlargement will be surrounded by the Home's existing building on three sides and occupies space that would otherwise be separated by adjacent neighbors' yards by a fence and wall of at least 12 feet in height; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Home could occur on the existing lot given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested rear yard waiver is the minimum waiver necessary to accommodate the Home's current and projected programmatic needs; and

WHEREAS, the Board notes that the applicant will limit the enlargement to one-story and 14 ft. in height so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Home to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type II action

pursuant to Sections 617.13 of 6NYCRR; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R8 zoning district and partially within a C1-4(R8) zoning district, a one-story enlargement in the rear yard of an existing nursing home which is contrary to ZR § 24-33, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 27, 2006"- (3) sheets; and *on further condition*:

THAT the total building floor area of the post-enlargement building shall not exceed 170,549 sq. ft. (6.5 FAR), as illustrated on the BSA-approved plans;

THAT the proposed enlargement shall be one story and 14 ft. in height;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2006.

159-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Shalom Kalnicki, owner.

SUBJECT – Application July 18, 2006 – Pursuant to ZR §72-21 for a variance to construct a single family home on a vacant lot which does not comply with the minimum lot width ZR §23-32 and less than the total required side yard, ZR §23-461. The premise is located in an R1-1 zoning district.

PREMISES AFFECTED – 4540 Palisade Avenue, east side of Palisade Avenue, 573' from 246th Street, Block 5923, Lot 231, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0

THE RESOLUTION:

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WHEREAS, the decision of the Bronx Borough Commissioner, dated June 29, 2006, acting on Department of Buildings Application No. 200903978, reads, in pertinent part:

1. Proposed minimum lot width is contrary to Section 23-32 of NYC Zoning Resolution.
2. Proposed side yard is contrary to Section 23-461(a) of NYC Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R1-1 zoning district mapped within a Special Natural Area District (“SNAD”), the construction of a two-story single-family dwelling, which does not comply with minimum lot width and required side yards, contrary to ZR §§ 23-32 and 23-461(a); and

WHEREAS, the proposed dwelling will have the following complying parameters: 4,059 sq. ft. of floor area, a Floor Area Ratio (FAR) of 0.41, an open space ratio of 195, a wall height of 25 ft., a total height of 38.4 ft., a front yard of 20 ft., a rear yard of 48 ft., and two parking spaces; and

WHEREAS, however, the lot has a non-complying width of 86.4 ft.; and

WHEREAS, further, the proposed dwelling will have one side yard of 18.25 ft. and one of 8.0 ft, which does not comply with R1-1 district side yard requirements; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in *The City Record*, and then to decision on December 5, 2006; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioners Ottley-Brown and Hinkson; and

WHEREAS, the site is located on the east side of Palisade Avenue, approximately 573 ft. from 246th Street, and has 9,983.3 sq. ft. of lot area; and

WHEREAS, the site has an average width of 86.4 ft., with 100 ft. of frontage on Palisade Avenue, but a width of only 72.82 ft. at the rear lot line; and

WHEREAS, the site was formerly located within an R1-2 zoning district, and the lot was fully compliant with the requirements of this district in terms of its dimensions; and

WHEREAS, further, the site was previously developed with a single-family home that complied with the R1-2 zoning parameters; this dwelling was demolished by the prior owner and the site is now vacant; and

WHEREAS, subsequently, on October 11, 2005, the site was rezoned to R1-1; and

WHEREAS, under the R1-1 zoning, the minimum required lot width is 100 ft., and the minimum required side yard is 15 ft., with total side yards of at least 35 ft.; and

WHEREAS, further, because the site is within a SNAD, it is affected by an “area of no disturbance” regulation, which provides that no development is permitted along the site’s northern and eastern perimeters; and

WHEREAS, the applicant states that the site cannot be developed at all without a variance, due to its width, and also contends that side yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the irregular shape of the lot; and (2) the slope that affects the site; (3) the afore-mentioned “area of no disturbance”; and (4) the site’s vacancy; and

WHEREAS, as to the site’s shape, that applicant states that although the site has 100 ft. of frontage on Palisade Avenue, because it narrows towards the rear lot line, the average width is only 86.4 ft., which is less than the required 100 ft. within the subject R1-1 district; and

WHEREAS, the Board agrees that no development on the site is possible unless this requirement is waived; and

WHEREAS, as to the steep slope, the applicant notes that the site slopes steeply upward from its northwest corner to its southeast corner, with the lowest elevation being 76 ft. and the highest being 98 ft.; a topographical map was submitted in support of this claim; and

WHEREAS, the applicant notes that this slope limits the location of new development to that portion of the lot least affected by the slope; and

WHEREAS, as to the “area of no disturbance”, the applicant notes that this area was established to protect the aforementioned slope, and likewise constrains the location of any new development; and

WHEREAS, both the slope and the “area of no disturbance” push new development towards the southern portion of the lot; and

WHEREAS, the applicant states that since the location of construction is thus constrained, the project architect is unable to design a functional house with an efficient floor plan that also complies fully with the R1-1 district yard requirements; and

WHEREAS, the applicant notes that the proposed home is oriented in a traditional large lot manner, with its long side facing the street; any other orientation that might allow compliance with the side yard requirements would affect the value and utility of the house; and

WHEREAS, as to vacancy, the applicant notes that the lot is one of the few undeveloped lots in the immediate vicinity, aside from abutting lots that are also non-compliant as to width; and

WHEREAS, the Board is aware that a site does not have to be singularly unique in order to qualify for a variance, and finds that the convergence of unique conditions affecting the subject lot render it sufficiently uniquely compromised to sustain the requested waivers; and

WHEREAS, thus, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that a complying development could be constructed; and

WHEREAS, the applicant notes that the proposed house complies with all R1-1 district bulk parameters aside from lot width and side yards; and

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WHEREAS, the applicant further notes that any impact on the adjacent lot to the south is minimized by the proposed southern side yard at the second floor, which, at its greatest point, measures 16.9 ft.; and

WHEREAS, finally, the applicant notes that the design and location of the proposed house has been preliminarily reviewed by staff at the Department of City Planning, and that a further review will be conducted by the City Planning Commission since the proposal must receive an authorization; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R1-1 zoning district mapped within a Special Natural Area District, the construction of a two-story single-family dwelling, which does not comply with minimum lot width and required side yards, contrary to ZR §§ 23-32 and 23-461(a); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 30, 2006" – (11) sheets; and *on further condition*:

THAT all bulk parameters, including side yards, shall be as reflected on the BSA-approved plans;

THAT no building permit shall be issued until the proposed home has received an authorization from the City Planning Commission for its location with a Special Natural Area District;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2006.

226-06-BZ

APPLICANT– Eric Palatnik, P.C., for Bracha Weinstock, owner.

SUBJECT – Application September 5, 2006 – Pursuant to ZR §73-622 for the enlargement of a single family semi-detached residence. This application seeks to vary ZR §23-141(a) for open space and floor area; ZR §23-461(b) for less than the minimum side yard of 8 feet; ZR §23-47 for less than the minimum rear yard and ZR §23-631 for perimeter wall height. The premise is located in an R3-2(HS) zoning district.

PREMISES AFFECTED – 1766 East 28th Street, between Avenue R and Quentin Road, Block 6810, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 21, 2006, acting on Department of Buildings Application No. 302216420, reads in pertinent part:

- “1. Proposed plans are contrary to ZR 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed Open Space Ratio (OSR) is less than the required 150%.
3. Proposed plans are contrary to ZR 23-461(b) in that the existing side yard is less than the required 8’-0”.
4. Proposed plans are contrary to ZR 23-631(b) in that height of building exceeds 21’-0”.
5. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’- 0”.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a semi-detached single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio (FAR), open space ratio, side yard, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in *The City Record*, and then to decision on December 5, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

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WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the adjacent neighbor provided testimony in opposition to the application, citing concerns about access to light and air; and

WHEREAS, the subject lot is located on the west side of East 28th Street, between Avenue R and Quentin Road; and

WHEREAS, the subject lot has a total lot area of 2,601 sq. ft., and is occupied by a 1,685 sq. ft. (0.65 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,685 sq. ft. (0.65 FAR) to 2,601 sq. ft. (1.00 FAR); the maximum floor area permitted is 1,301 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to reduce the open space from 1,691 sq. ft. to 1,301 sq. ft. (1,690.65 sq. ft. is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard of 4'-5½" (a side yard with a minimum width of 8'-0" is required); and

WHEREAS, the applicant proposes to provide a rear yard of 20'-3" (30'-0" is the minimum required); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the applicant proposes to maintain the existing non-complying perimeter wall height of 24'-0" and complying total height of 29'-5"; and

WHEREAS, the proposed enlargement will be two stories and will be located entirely at the rear of the existing home; and

WHEREAS, the Board notes that the proposed perimeter wall height is equal to that of the adjacent building, which is permitted pursuant to ZR § 73-622; and

WHEREAS, further, the Board notes that the entire enlargement is at the rear of the home and that the perimeter wall facing the street will not be changed; and

WHEREAS, in response to the neighbor's concerns, the Board notes that the special permit clearly contemplates enlargements which are situated at the rear of homes since they are deemed to have less impact on the character of the neighborhood and result in the least change to the streetscape as they are not visible from the street; and

WHEREAS, at hearing, the Board asked the applicant to identify the depth of rear yard, as the addition has a somewhat irregular shape; and

WHEREAS, the applicant provided revised drawings with a notation identifying the proper rear yard dimension of 20'-3"; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use

and development of the surrounding area; and

WHEREAS, Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a semi-detached single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, side yard, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 13, 2006"-(9) sheets and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the parameters of the building: a total floor area of 2,601 sq. ft. (1.00 FAR), a wall height of 24'-0", a total height of 29'-5", a front yard of 15'-6", a side yard of 4'-5 ½", a rear yard of 20'-3", and 1,301 sq. ft. of open space, all as illustrated on the BSA-approved plans;

THAT the garage shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2006.

258-06-BZ

CEQR #07-BSA-017Q

APPLICANT– Anderson Kill & Olick, P.E., for Our Lady of the Snows Church, owner.

SUBJECT – Application September 20, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed one-story church sanctuary which would be built on a portion of the site

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currently occupied by a parking lot. The applicant proposes to move out of its existing sanctuary on the same site, which was originally built as a gymnasium / auditorium for the parochial school. The Premises is located in an R2 zoning district. The proposal is seeking waivers of Z.R. §24-111 and §23-141 with respect to the proposed one-story addition (additional floor area) exceeding the permitted community facility floor area in an R2 zoning district.

PREMISES AFFECTED – 79-48 259th Street, 258-15 80th Avenue, 79-33 258th Street, entire block bounded by Union Turnpike, 79th Avenue, 259th Street, 80th Avenue, 258th Street, Block 8695, Lots 1, 60, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Robert Cook.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 8, 2006, acting on Department of Buildings Application No. 402303342, reads, in pertinent part:

“Proposed one story addition [additional floor area] for new church exceeds permitted community facility floor area in R2 district as per 24-11 ZR.”; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R2 zoning district, the construction of a one-story church sanctuary, which is contrary to ZR § 24-111; and

WHEREAS, the application is brought on behalf of Our Lady of the Snows Church (the “Church”), a nonprofit religious institution; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, and then to decision on December 5, 2006; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan; and

WHEREAS, the site occupies the entire block bounded by Union Turnpike, 79th Avenue, 259th Street , 80th Avenue, and 258th Street; and

WHEREAS, the subject site has a total lot area of 118,560 sq. ft. and comprises two tax lots – lot 1 and lot 60; and

WHEREAS, lot 1, which encompasses the majority of the site, is occupied by the existing church building (the “Existing Building”), two parochial school buildings (serving 500 students), and three separate accessory parking lots; lot 60, a small lot located in the southeast corner of the site, is occupied by a two-story rectory building; a total of 166 accessory parking spaces are provided; and

WHEREAS, the applicant proposes to construct a one-story, semi-circular church sanctuary building, with a floor area of 13,665 sq. ft. and 800 seats (the “New Building”); and

WHEREAS, the New Building will be located in the southwest corner of the site, which is presently occupied by a parking lot; all of the existing buildings and the remainder of the parking will remain; and

WHEREAS, the proposed development complies with regulations applicable to community facilities in the subject R2 zoning district, except for the floor area and FAR; and

WHEREAS, specifically, the applicant proposes a total floor area of 71,441 sq. ft. (59,280 sq. ft. is the maximum permitted for a community facility in the subject R2 zoning district) and an FAR of 0.602 (0.50 is the maximum permitted for a community facility in the subject R2 zoning district); and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Church, which seeks to build a new church sanctuary in order to accommodate the growing congregation; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Church: (1) a significant increase in attendance over the past 57 years; (2) the school’s need for a gymnasium/auditorium; and (3) a need to improve access and modernize facilities; and

WHEREAS, as to attendance, the applicant states that the Church now serves an average of 1,975 parishioners; and

WHEREAS, the applicant represents that the Existing Building has seating capacity for 350 congregants; therefore, in order to accommodate the large attendance, the Church must hold five masses on Sunday and two on Saturday; and

WHEREAS, the applicant represents that with the proposed 800-seat sanctuary, the number of masses could be reduced to three on Sunday and one on Saturday; and

WHEREAS, as to the need for a gymnasium/auditorium, the applicant represents that the Existing Building was built for use as a gymnasium for the school; and

WHEREAS, however, the building was converted into the Church’s sanctuary and the gymnasium/auditorium was never replaced; and

WHEREAS, the applicant represents that the school has had to lease a gymnasium offsite that students’ parents must drive them to; and

WHEREAS, the proposed plans provide for the Existing Building to revert to its intended use as a large gymnasium/auditorium for the school; and

WHEREAS, as to the inefficiency of the current facilities, the applicant represents that because the Existing Building was designed for other purposes, it is not well-suited for use as a church sanctuary; and

WHEREAS, specifically, the inadequacies of the Existing Building include the following: (1) the building is long and narrow, resulting in a long distance between the altar and the back pews, (2) the building is only accessible by a set of stairs or from an open ramp at the rear, which compromises handicapped accessibility, and (3) the building only has one restroom, which is not handicapped accessible

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and cannot accommodate the large number of parishioners; and

WHEREAS, the improvements of the New Building include the following: (1) a semi-circular design of the sanctuary space, which allows for a more inclusive design with shorter distances from the altar, (2) improved ramped entrances and an elevator, and (3) the provision of additional restrooms, which are handicapped accessible; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the construction of the New Building is necessary to address the Church's needs, given the limitations of the Existing Building; and

WHEREAS, further, the Board notes that the New Building will be integrated with and relate to the existing buildings in an efficient manner; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the Existing Building for use as a sanctuary, when considered in conjunction with the programmatic needs of the Church, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Church is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant states that the proposed one-story New Building will have a lower height than the other buildings on the site; and

WHEREAS, additionally, the applicant notes that the church use has been uninterrupted at the site since approximately 1949 and therefore is a fixture in the community; and

WHEREAS, further, the applicant asserts that the larger capacity of the New Building and the resultant reduction in the number of church services will reduce pedestrian and vehicle congestion caused by overcrowded services; and

WHEREAS, the applicant notes that the Church has a surplus of parking spaces and asserts that the elimination of the 22 spaces currently located at the site of the New Building will not negatively impact the site or its surroundings; and

WHEREAS, the Board has reviewed a parking analysis which concludes that the parking demand generated by the New Building can be accommodated; and

WHEREAS, at hearing, some of the Board members asked the applicant if other site designs had been considered, such as orienting the New Building towards the commercial thoroughfare on the Union Turnpike/79th Avenue side, rather than towards the residential area on 258th Street; and

WHEREAS, the applicant responded that the proposed

design allows the Church to best meet its programmatic needs since the proposal provides for the New Building to be connected to the Existing Building, for access to the community room therein; and

WHEREAS, further, the applicant represents that the proposed location of the New Building allows the Church to maintain a greater number of the existing parking spaces; and

WHEREAS, the Board agrees that the proposed New Building is compatible with the surrounding neighborhood in terms of bulk and height; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no as of right development at the site would meet the programmatic needs of the Church; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the Church; and

WHEREAS, the applicant states that the proposed FAR of 0.602 only exceeds the permitted FAR of 0.50 by 0.102 and that the proposed floor area of 71,441 sq. ft. exceeds the permitted floor area of 59,280 sq. ft. by 12,161 sq. ft., a factor of approximately 20 percent; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Church to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA017Q, dated September 12, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed

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action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R2 zoning district, the construction of a one-story church sanctuary, which is contrary to ZR § 24-111, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 27, 2006"-(6) sheets and "Received November 30, 2006"-(1) sheet and *on further condition*:

THAT the total floor area of the site shall not exceed 118,560 sq. ft. (0.602 FAR), as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2006.

194-04-BZ thru 199-04-BZ

APPLICANT – Augusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179), Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178), Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177), Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176), Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175), Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Michael S. Ross, Nicholas Recchia, Mitchell Ross and N. Nick Perry.

For Opposition: Robinson Hernandez and Darryl Hollon.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 6, 2007, at 1:30 P.M., for decision, hearing closed.

239-04-BZ

APPLICANT– Augusta & Ross, for 341 Scholes Street, LLC, owner.

SUBJECT – Application June 24, 2004 – Variance (§72-21) to permit the proposed residential occupancy, Use Group 2, within an existing loft building, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 225 Starr Street, northerly side of Starr Street, 304' east of Irving Avenue, Block 3188, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Mitchell Ross and Ioah Sita.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for continued hearing.

290-04-BZ

APPLICANT – Stuart A. Klein, Esq., for Alex Lokshin – Carroll Gardens, LLC, owner.

SUBJECT – Application August 20, 2004 – under Z.R. §72-21 to permit, in an R4 zoning district, the conversion of an existing one-story warehouse building into a six-story and penthouse mixed-use residential/commercial building, which is contrary to Z.R. §§22-00, 23-141(b), 23-631(b), 23-222, 25-23, 23-45, and 23-462(a).

PREMISES AFFECTED – 341-349 Troy Avenue (a/k/a 1515 Carroll Street), Northeast corner of intersection of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for deferred decision.

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application December 28, 2005 – Pursuant to ZR §73-44 Special Permit to permit the proposed retail,

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community facility and office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking and is contrary to ZR §36-21.

PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Earle Tolkman and Chuck Arclian.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for continued hearing.

36-06-BZ

APPLICANT – Sheldon Lobel, P.C., for The RNR Group Ltd., owner.

SUBJECT – Application March 1, 2006 – Special Permit pursuant to Z.R. §73-53 to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,485 square feet.

PREMISES AFFECTED – 2125 Utica Avenue, east side of Utica Avenue between Avenue M and Avenue N, Block 7875, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Richard Lobel.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for decision, hearing closed.

50-06-BZ

APPLICANT – Jeffrey A. Chester, Esq., for 461 Carool Strait, LLC, owner.

SUBJECT – Application March 20, 2006 – Use Variance pursuant to Z.R. §72-21 to permit the conversion and expansion of a commercial/industrial building to a two-family residence. The premise is located in a M1-2 zoning district. The waiver requested relates to the use regulations pursuant to Z.R. §42-00. The subject site was previously used by Linda Tool Co., a custom tool and dye manufacturer which occupied the premises for several decades.

PREMISES AFFECTED – 461 Carroll Street, between Nevins Street and Third Avenue, Block 447, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jeffrey Chester.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for decision, hearing closed.

55-06-BZ

APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.

SUBJECT – Application March 24, 2006 – Zoning variance pursuant to ZR §72-21 to allow a proposed office building in an R3-2/C1-1 (NA-1) district to violate applicable rear yard regulations; contrary to ZR §33-26 and §33-23. Special Permit is also proposed pursuant to ZR §73-44 to allow reduction in required accessory parking spaces.

PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot (Tentative 92, 93, 94), Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for decision, hearing closed.

67-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.

SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of ZR §22-00 and §36-21. The proposed number of parking spaces pursuant to a waiver of ZR §36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Joseph Morsellino, Marc Steinberg, Hiriam Rothkrug, Frank Trigglio, Kevin Barry and Stuart Walebuam.
For Opposition: Raymond M Farrell.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for continued hearing.

99-06-BZ

APPLICANT – Patrick W. Jones, P.C., for Norsel Realities c/o Steinberg & Pokoik, owners; Mothers Work, Inc., lessee.

SUBJECT – Application May 15, 2006 – Special Permit §73-36 – to permit the legalization of an existing physical cultural

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establishment (Edamame Spa) located in the cellar portion of a 25 story commercial building located within a C5-3 (MID) Zoning District.

PREMISES AFFECTED – 575 Madison Avenue (a/k/a 53/57 East 56th Street, a/k/a 28/30 East 57th Street) East side of Madison Avenue, between East 56th and East 57th Streets, Block 1292, Lot 52, Borough of Manhattan.

COMMUNITY BOARD # 5M

APPEARANCES –

For Applicant: Patrick W. Jones.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for decision, hearing closed.

122-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Revelation Development, Inc., owner.

SUBJECT – Application June 12, 2006 – Variance (§72-21) to permit the proposed enlargement of an existing medical office building and construction of residences without the required front and side yard. The Premise is located in a portion of an R5 and a portion of a C2-3/R5 zoning district. The proposal is seeking waivers relating to §23-45 and §24-34 (Front yard) and §23-462 and §24-35 (Side Yard).

PREMISES AFFECTED – 2671 86th Street, West 12th and West 11th Streets, Block 7115, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Irving Minken.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for decision, hearing closed.

137-06-BZ

APPLICANT– Rothkrug Rothkrug & Spector, LLP, for Adragna Realty, LLC., owner.

SUBJECT – Application June 30, 2006 – Variance (§72-21) for the proposed construction of a two-family dwelling on a vacant lot that does not provide a required side yard (§23-461) and does not line up with front yard line of adjacent lot (§23-45 (b)) in an R4A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, west side of Hering Avenue 325' south of Morris Park Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD # 11BX

APPEARANCES –

For Applicant: Hiram Rothkrug.

For Opposition: Michael Treanor.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for continued hearing.

180-06-BZ

APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Yeshiva University, owner.

SUBJECT – Application August 18, 2006 – Zoning variance to allow a new six (6) story academic building (UG3) for Yeshiva University that would violate applicable lot coverage (§24-11), rear yard (§24-36 and §24-391) and height and setback requirements (§24-522).

PREMISES AFFECTED – 515 West 185th Street, northwest corner of Amsterdam Avenue and West 185th Street, Block 2156, Lots 46, 61, 64, 146, 147, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Al Fredericks, Ken Drucker and Jeffrey Rosengartell.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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314-06-BZ

2565 East 17th Street, Between Avenue Y and Z, Block 7438, Lot(s) 51 Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT) 73-36-to permit the proposed Physical Culture Establishment (aka spa) at the cellar level of the proposed structure.

315-06-BZ

1739 Ocean Avenue, Between Avenue L and M., Block 7638, Lot(s) 24 Borough of **Brooklyn, Community Board: 14.** Under 72-21-To permit the proposed(UG4) religious based/educated facility pre-school and kindergarten children with an accessory synagogue.

316-06-BZ

2960 Webster Avenue, Webster Avenue between Bedford Park Boulevard and Botanical Square South., Block 3274, Lot(s) 1,4 Borough of **Bronx, Community Board: 7.** Under 72-21-To permit the construction of the proposed accessory parking garage, (UG4) and will provide 825 parking spaces on six stories, in one cellar level and on the roof.

317-06-A

180th Street, Premises is situated at the following intersections: 176th Street and 109th Avenue and Fern Place, 177th Street and Watson Place, 178th Street and Roscoe Street, 180th Street and 106th Road., Block 10343, Lot(s) 300,32,12,1 Borough of **Queens, Community Board: 12.** Appeal-Proposed structure for groundwater remediation system, secure approval from BSA.

319-06-BZ

211/283 63rd Street, North side of 63rd street between 2nd and 3rd Avenues, Block 5798, Lot(s) 1 Borough of **Brooklyn, Community Board: 7.** (SPECIAL PERMIT) 73-49-To permit accessory parking of vehicles on the rooftop of a building.

320-06-A

4368 Furman Avenue, Furman Avenue between East 236th and East 237th, Block 5047, Lot(s) 12 Borough of **Bronx, Community Board: 12.** Appeal-To reinstate denial of the NYC DOB, Bronx Office permit # 200811407, on the grounds that the denial was contrary to law, arbitrary and capricious and in defiance of past interpretations

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JANUARY 23, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 23, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1053-88-BZ

APPLICANT – Freda Design Associates, Ltd., for Isidore Izzo, owner.

SUBJECT – Application August 23, 2006 - Extension of Term and waiver of the rules for a variance (§72-21) to allow a (UG6) pharmacy (Rite-Aid) in a R7-1 zoning district which expired on September 27, 2004.

PREMISES AFFECTED – 590/596 East 183rd Street, located between Arthur Avenue and Adams Avenue, Block 3071, Lots 16 & 17, Borough of The Bronx.

COMMUNITY BOARD #6BBX

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 - Extension of Term/Amendment-To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

265-02-BZ

APPLICANT – Peter Hirshman, for Ramakrishna Vivekananda Center, owner.

SUBJECT – Application October 13, 2006 - Extension of time to complete construction and to obtain a Certificate of Occupancy which expires on August 12, 2007 for a community facility use (UG4) (Ramakrishna-Vivekananda Center of New York) located in an R8B and R10 zoning district.

PREMISES AFFECTED – 19 East 94th Street, south side 108' west of the intersection of Madison Avenue, Block 1506, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #8M

383-04-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Israel Realty; lessee: Total Fitness & Karate Center

SUBJECT – Application December 6, 2004 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 46-21 Greenpoint Avenue, 47th Street, Block 152, Lot 1, Borough of Queens.

COMMUNITY BOARD #2 Q

312-05-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Gladiator Gymnasium.

SUBJECT – Application October 19, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 82-24 Northern Boulevard, between 82nd and 83rd Streets, Block 1430, Lot 6, Borough of Queens.

COMMUNITY BOARD #3Q

APPEALS CALENDAR

77-06-A & 78-06-A

APPLICANT – Stephen J. Rizzo, Esq., for Block 7092 LLC, owner.

SUBJECT – Application April 27, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the zoning district regulations in effect as of March 1999. R3-2 Zoning District.

PREMISES AFFECTED – 96 Crabtree Avenue, Woodrow Road east of Turner Street, Block 7092, Lot 1, Block 7105, Lots 555 & 561, Borough of Staten Island.

COMMUNITY BOARD #3SI

105-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Elizabeth Iocovello.

SUBJECT – Application May 9, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 3242 Reservoir Oval East, south side, approx. 240' east of Bainbridge Avenue, west of Holt Place, Block 3343, Lot 28, Borough of The Bronx.

COMMUNITY BOARD #7BX

229-06-A

APPLICANT – Sheldon Lobel, P.C., for Breezy Point

CALENDAR

Cooperative, Inc., owner; Thomas Carroll, lessee.
SUBJECT – September 6, 2006 - Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which creates new non-compliances, increases the degree of existing non-compliances with the bulk provisions of the Zoning Resolutions and violates provisions of the Building Code, regarding access and fire safety. R4 - Zoning District.
PREMISES AFFECTED – 607 Bayside Drive, adjacent to service road, Block 16350, Lot 300, Borough of Queens.
COMMUNITY BOARD #14Q

287-05-A
APPLICANT – New York City Board of Standards and Appeals.
OWNER: 32-42 33 Street, LLC, owner.
SUBJECT – Application September 15, 2005 – To consider dismissal for lack of prosecution.
PREMISES AFFECTED – 32-42 33rd Street, between Broadway and 34th Avenue, Block 612, Lot 53, Borough of Queens.
COMMUNITY BOARD #1Q

JANUARY 23, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 23, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

151-04-BZ
APPLICANT– Philips Nizer, LLP, for Fred M. Schildwachter & Son, Inc., c/o Dan Schildwachter, owner; Adriana A. Salamone, lessee.
SUBJECT – Application April 9, 2004 - Special Permit (§73-36) to permit the legalization of an existing physical culture establishment (Star Fitness) in an M3-1 Zoning District.
PREMISES AFFECTED – 1385 Commerce Avenue, southwest corner of Butler Place, Block 1385, Lot 13, Borough of The Bronx.
COMMUNITY BOARD #10BX

25-06-BZ
APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.
SUBJECT – Application February 14, 2006 - Variance (§

72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§ 23-22), street wall height (§ 23-631 & § 24-521), maximum building height (§ 23-631), front yard (§ 24-34), side yards (§ 24-35 & §24-551), FAR (§ 24-11, 24-162 & 23-141) and lot coverage (§ 23-141 & § 24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.
PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.
COMMUNITY BOARD #15BK

103-06-BZ
APPLICANT– Eric Palatnik, P.C., for Charles Mandlebaum, owner.
SUBJECT – Application May 23, 2006 - Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141(a)) and rear yard (23-47) in R-2 zoning district.
PREMISES AFFECTED – 1324 East 23rd Street, East 23rd Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.
COMMUNITY BOARD #14BK

107-06-BZ
APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Barbizon Hotel Associates, L.L.P.
SUBJECT – Application May 25, 2006 - Special Permit (§ 73-36) To allow a physical culture establishment use (Equinox) in the cellar, subcellar, first floor and second floor of a 22 story mixed use building. C1-8X/R8B zoning district.
PREMISES AFFECTED – 140 East 63rd Street, northwest corner block bounded by Lexington and Third Avenues, Block 1397, Lot 49, Borough of Manhattan.
COMMUNITY BOARD #8M

133-06-BZ
APPLICANT– The Law Office of Fredrick A. Becker, for Parish of Trinity Church, owner; TSI Varick Street dba New York Sports Club; lessee.
SUBJECT – Application June 23, 2006 – Special Permit (§73-36) Proposed physical culture establishment to be located on the second floor of an existing 12 story commercial building. M1-5 Zoning District.
PREMISES AFFECTED – 225 Varick Street, westerly side of Varick Street between West Houston Street and Clarkson Street, Block 581, Lot 63, Borough of Manhattan.
COMMUNITY BOARD #2M

175-06-BZ

CALENDAR

APPLICANT– Rothkrug Rothkrug & Spector, for Sal Calcagno & Family Realty, LLC, owner.

SUBJECT – Application August 14, 2006 – Special Permits (Sections 73-243 and 73-44) to allow, within C1-1 (R1-2) (NA-1) zoning districts, the development of an eating and drinking establishment (UG 6) with an accessory drive-through facility and to permit a reduction in the amount of required off-street parking for UG 6 parking category B-1 uses. The proposal is contrary to Sections 32-15 and 36-21 respectively.

PREMISES AFFECTED – 1653/9 Richmond Road, west side of Richmond Road, 417.06’ south of intersection with Four Corners Road, Block 883, Lot Tentative 27, Borough of Staten Island.

COMMUNITY BOARD # 2SI

177-06-BZ

APPLICANT– Sheldon Lobel, P.C., for 1840 EMAB LLC, owner.

SUBJECT – Application August 16, 2006 – Special permit (§§ 11-411, 11-413). On a lot consisting of 9,700 SF, in a C2-2 in R3A district, permission sought to legalize auto repair and sale of used cars (UG 16). The existing and proposed FAR is .14 for the one-story commercial building. DOB Objection: Section 32-25: Auto repair and auto sales (UG16) not permitted in C2-2 district.

PREMISES AFFECTED – 1840 Richmond Terrace, Clove Road and Bodine Street, Block 201, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

236-06-BZ

APPLICANT– Moshe M. Friedman, for Michael Dalezman, owner.

SUBJECT – Application September 12, 2006 - Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space, floor area (23-141) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1500 East 21st Street aka Kenmore Place, 115’ north of intersection formed by East 21st Street and Avenue N, Block 7656, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #14BK

274-06-BZ

APPLICANT– Stadtmauer Bailkin, LLP, for Rockaway Homes, Inc., owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) for the construction of a two-story one family residence on a vacant lot which seeks to vary the required

front yards (23-45) and minimum lot width (23-32) in an R3-2 zoning district.

PREMISES AFFECTED – 116-07 132nd Street, vacant triangular lot with Lincoln Street to the east 132nd Street to the west and 116th Avenue to the north, Block 11688, Lot 1, Borough of Queens.

COMMUNITY BOARD #10Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 12, 2006
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, September 26, 2006 and September 27, 2006 as printed in the bulletin of October 6, 2006, Vol. 91, No. 38. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

441-65-BZ

APPLICANT – Sheldon Lobel, P.C. for Eleanor Barrett c/o JP Morgan Chase, owner; Hess Amerada Corporation, lessee. SUBJECT – Application March 20, 2006 – Pursuant to ZR §73-11 and §73-211 an Amendment to a previously granted special permit for the redevelopment of a gasoline service station, to construct an accessory convenience store (Hess Express), to construct a new canopy and six pump islands with MPD dispensers and one diesel fuel dispenser. The premise is located in C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2488 Hylan Boulevard, located on the east side of Hylan Boulevard between Jacques Avenue and New Dorp Lane, Block 3900, Lot 12, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an amendment to the previously granted variance for a gasoline service station with accessory uses; and

WHEREAS, a public hearing was held on this application on August 15, 2005, after due notice by publication in *The City Record*, to continued hearings on October 17, 2006 and November 14, 2006, and then to decision on December 12, 2006; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application, citing concerns about the initial traffic plan and its potential impact on traffic congestion on New Dorp Lane; and

WHEREAS, the Borough President submitted testimony in opposition to the application, citing concerns about traffic, the proposed street widening, site design, and interference with an existing bus stop; and

WHEREAS, by letter dated September 25, 2006, the Department of Transportation (DOT) stated that it has initiated a Capital Project for Fiscal Year 2007, which calls for the acquisition of a ten-foot strip at the site along New Dorp Lane so as to create a right turn bay onto Hylan Boulevard; the capital project is in the ULURP process; and

WHEREAS, accordingly, DOT requests that the access from New Dorp Lane be restricted to one curb cut at the most remote point from the intersection; and

WHEREAS, the premises is located on the east side of Hylan Boulevard between Jacques Avenue and New Dorp Lane; and

WHEREAS, the site is located within a C2-1 (R3-2) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 25, 1961 when, under BSA Cal. No. 568-61-BZ, the Board granted an application for the reconstruction of an existing gasoline service station; and

WHEREAS, subsequently, the grant was amended twice to permit an extension of time to complete construction; and

WHEREAS, on July 13, 1965, under the subject calendar number, the Board granted a special permit to permit the reconstruction of the existing gasoline service station; and

WHEREAS, most recently, on January 22, 1991, under the subject calendar number, the Board reopened and amended the resolution to allow for certain site modifications; and

WHEREAS, the applicant now seeks to make the following changes to the site: remove the existing accessory building, construct a 2,478 sq. ft. accessory convenience store, relocate the underground storage tanks, install a new canopy and six concrete pump islands, increase the number of pumps, and reduce the number of curb cuts from seven to five; and

WHEREAS, during the hearing process, the applicant addressed the Community Board's concern about the traffic plan and its impact on traffic congestion on New Dorp Lane, and

WHEREAS, further, the applicant addressed DOT's concern about accommodating the street widening and the planned right turn bay on New Dorp Lane; and

WHEREAS, finally, the applicant addressed the following concerns of the Borough President: (1) traffic congestion, (2) site design, and (3) interference with an existing bus stop; and

WHEREAS, as to the impact on traffic congestion on New Dorp Lane, the applicant eliminated the curb cut on New Dorp Lane closest to the intersection with Hylan Boulevard, which leaves only one curb cut on New Dorp Lane, 50'-9" from Hylan Boulevard; and

WHEREAS, the applicant asserts that the proposed traffic plan with one curb cut on New Dorp Lane provides for an unobstructed path between the New Dorp Lane curb cut and the convenience store and the pump islands, which is designed to reduce any backups at the site; and

WHEREAS, further, the applicant asserts that traffic will primarily access the site via Hylan Boulevard and the two curb cuts on this street, rather than via New Dorp Lane; and

WHEREAS, as to the accommodation of the proposed

MINUTES

DOT acquisition and street widening, the applicant redesigned the site so that the pump islands would be located deeper into the site and further away from New Dorp Lane; and

WHEREAS, this will allow an ample buffer between the site and the planned widened road, permitting improved access to the proposed site improvements and unobstructed queuing space for the pumps; and

WHEREAS, the Board notes that DOT has no objection to the revised site design; and

WHEREAS, as to the site design generally, the applicant relocated the proposed convenience store, underground tanks, pump islands, and curb cuts so as to provide better access and maneuverability within the site; and

WHEREAS, as noted above, these changes included shifting the curb cuts so that they are aligned with unobstructed pathways through the site; and

WHEREAS, as to the question about a bus stop on Hylan Boulevard in front of the site, the applicant confirmed that no bus stop exists at that location; and

WHEREAS, in addition to the above-mentioned issues, the Board raised other concerns: (1) the potential interference between cars visiting the pump islands and those parking at the convenience store, (2) the proposed location of the curb cut on Jacques Avenue, and (3) the accessibility to any bus stops located along the site's street frontage, as noted by the Borough President; and

WHEREAS, in response, the applicant initially asserts that neither more pumps nor the convenience store would increase the amount of traffic at the site, since the modifications would allow more space to meet the demand of traffic already on Hylan Boulevard; and

WHEREAS, as to the site design, in the initial proposal, the applicant proposed to position the convenience store towards the middle of the site and along the southeast property line; and

WHEREAS, the Board asked the applicant if it would be possible to reorient the convenience store so that there would be more space between the pump islands and the accessory parking; and

WHEREAS, the applicant responded that, per the Building Code, the convenience store must be positioned so that the gas station attendant inside the store has a clear view of the pumps; and

WHEREAS, additionally, the applicant represents that the gas station corporate owner has a standard store design that must be followed; and

WHEREAS, nonetheless, the applicant revised the plans to reflect a re-positioning of the convenience store into the corner of the site formed by Hylan Boulevard and Jacques Avenue; and

WHEREAS, the Board observes that this position provides for better traffic circulation in and around the site while still allowing the gas station attendant an unobstructed view of the pumps; and

WHEREAS, specifically, the Board notes that the relocation of the building allows for a 35 ft. aisle between cars at the pump islands and those in the accessory parking spaces; and

WHEREAS, as to the proposed curb cuts, the applicant

initially proposed two curb cuts on New Dorp Lane, two on Hylan Boulevard, and one on Jacques Avenue; and

WHEREAS, as noted, the applicant reduced the proposed number of curb cuts on New Dorp Lane to one and relocated the curb cuts on Hylan Boulevard; and

WHEREAS, at hearing, the Board expressed concern about the initially proposed Jacques Avenue curb cut as it was located very close to the corner with Hylan Boulevard; and

WHEREAS, specifically, the Board asked the applicant if a curb cut was necessary on Jacques Avenue and how it might affect the traffic flow; and

WHEREAS, the applicant responded by stating that Jacques Avenue is a short street with a small number of residences and that the curb cut on Jacques Avenue would be used to a very limited extent, primarily by the residents on the street; and

WHEREAS, additionally, the applicant revised the plans to indicate that the curb cut on Jacques Avenue will be limited to ingress only and will therefore not result in additional traffic exiting onto Jacques Avenue; and

WHEREAS, accordingly, the Board concludes that the applicant addressed all concerns raised by the Community Board, DOT, and the Borough President, as well as concerns raised by the Board at hearing; and

WHEREAS, based upon the above, the Board finds the proposed amendments are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on July 13, 1965, so that as amended this portion of the resolution shall read: "to permit the construction of a new accessory convenience store building and to allow other noted site modifications *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application, marked "November 28, 2006"-(8) sheets; and *on further condition*:

THAT an opaque fence six feet in height will be installed and maintained along the southeastern property line from New Dorp Lane to Jacques Avenue;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review and approve the layout of the onsite parking;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 500821499)

Adopted by the Board of Standards and Appeals, December 12, 2006.

MINUTES

466-89-BZ

APPLICANT – Eric Palatnik, P.C., for Frank R. Bell Funeral Home Inc., owner.

SUBJECT – Application September 7, 2006 – Amendment to a previously granted Variance (§72-21) for the enlargement of an existing funeral home (UG7) to allow the increase of 1,250 square feet to the existing structure in an R6 zoning district.

PREMISES AFFECTED – 526, 528 and 536 Sterling Place, a/k/a 764 Classon Avenue, southwest corner of Sterling Place and Classon Avenue, Block 1174, Lots 32, 33, 35, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to the previously approved plans to allow for the enlargement of an existing funeral home; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in *The City Record*, and then to decision on December 12, 2006; and

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Letitia James provided testimony in support of this application; and

WHEREAS, the subject premises is located on the southwest corner of Sterling Place and Classon Avenue; and

WHEREAS, the site is an irregularly-shaped lot occupied by a one and three-story funeral establishment with approximately 9,899 sq. ft. of floor area, located within an R6 zoning district; and

WHEREAS, on June 11, 1990, under the subject calendar number, the Board granted a variance to permit the enlargement of an existing lawful non-conforming funeral home; and

WHEREAS, the instant application seeks to build a 1,250-sq.-ft. second-floor addition onto the one-story portion of the existing building; and

WHEREAS, the enlargement is proposed to be occupied by office space which would be accessory to the existing funeral home; and

WHEREAS, the applicant states that the proposed enlargement will also provide for a new lobby area to separate the existing casket display area and the proposed office space; and

WHEREAS, at hearing, the Board asked the applicant to

note the occupancy of each of the chapels and asked if any required public assembly permits had been obtained; and

WHEREAS, the applicant represents the public assembly permits will be obtained prior to the issuance of the new certificate of occupancy; and

WHEREAS, additionally, the Fire Department stated that there were not any outstanding violations and that it has no objection to the application; and

WHEREAS, the Board observes that the proposed amendment, to add 1,250 sq. ft. of floor area and to increase the building's total floor area from 8,485 sq. ft. to 9,735 sq. ft., is modest and does not affect the prior findings for the variance; and

WHEREAS, based upon the above, the Board finds that the requested amendment is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 11, 1990, so that as amended this portion of the resolution shall read: “to permit the enlargement of the existing funeral establishment; *on condition* that the use shall substantially conform to drawings as filed with this application, marked “December 6, 2006”-(5) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 301192750)

Adopted by the Board of Standards and Appeals, December 12, 2006.

139-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for The Mondrian Condominium, owner; Equinox 54th Street, Inc., lessee.

SUBJECT – Application June 30, 2006 – Extension of Term for a Special Permit (§73-36) to allow a Physical Cultural Establishment in a C1-9(TA) zoning district.

PREMISES AFFECTED – 250 East 54th Street, southwest corner of East 54th Street and 2nd Avenue, Block 1327, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Eric Palatnik

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

MINUTES

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 27, 2006, acting on Department of Buildings Application No. 402371287, reads in pertinent part:

“A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A2- The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on December 12, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated July 18, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 21, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated November 16, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 27, 2006, acting on Department of Buildings Application No. 402371287 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received July 6, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2006.

31-06-BZ

APPLICANT – NYC Board of Standards and Appeals.

OWNER OF PREMISES: Frank Falanga.

SUBJECT – Application February 24, 2006 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 102-10 159th Road, Block 14182,

Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application withdrawn from the dismissal calendar.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Adopted by the Board of Standards and Appeals, December 12, 2006.

615-57-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application October 10, 2006 – Extension of term for ten years, waiver of the rules for a gasoline service station (Exxon) which expired on June 5, 2003 and an extension of time to obtain a certificate of occupancy in an R-4 zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, between Kissena Boulevard and 145th Place, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for continued hearing.

304-82-BZ

APPLICANT – Bryan Cave, LLP, for Dansar, LLC, owner.

SUBJECT – Application October 6, 2006 – Re-open and amend an existing variance (§72-21) granted in 1984 for the conversion of floors two through nine in a commercial building to residential use with an existing commercial (UG6) on the first and cellar floors in an M1-5M zoning district.

PREMISES AFFECTED – 36 East 22nd Street, south side of East 22nd Street, 205’ west of the corner of Park Avenue, south and East 22nd, Block 850, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Ken Lowenstein and Robert Pauls.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

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17-93-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Lincoln Square Commercial Holding, owner; MP Sports Club Upper Westside LLC on behalf of Reebok-Sports Club/NY, Ltd., lessee.

SUBJECT – Application October 13, 2006 – Extension of term of a previously granted special permit (73-36) for a physical culture establishment (Reebok Sports Club/NY Ltd.) which expired on June 7, 2004; a waiver to file more than a year after the expiration of the term; extension of time to obtain a permanent certificate of occupancy and an amendment for the change in management/ownership and the hours of operation located in a C4-7(L) zoning district.

PREMISES AFFECTED – 160 Columbus Avenue (a/k/a 1992 Broadway), Block 1139, Lots 24, 30, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for adjourned hearing.

16-95-BZ

APPLICANT – Stadtmauer Bailkin, LP, for STA Parking Group, owner.

SUBJECT – Application September 29, 2006 – Extension of Time to complete construction, which expired on October 23, 2003, on a previously granted variance for a UG8 parking garage with accessory auto repairs and an amendment to permit the legalization of the ramps within the existing parking garage and the relocation of the accessory office from the first floor to the second floor in an R8B zoning district.

PREMISES AFFECTED – 434 East 77th Street, aka 433 East 76th Street, located between East 76th and 77th Street, between York and First Avenue, Block 1471, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Howard Zipser and Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

56-96-BZ

APPLICANT – Augusta & Ross, Rainer Group of New York, LLC, owner; Fountain of Youth Health Spa, Inc., lessee.

SUBJECT – Application April 23, 2006 – Extension of Term and waiver of the rules for a Special Permit (73-36) to allow a Physical Culture Establishment (Fountain of Youth Health

Spa) in an M1-1 zoning district which expired on March 1, 2006, and an amendment to permit a change in the hours of operation and a change in ownership/control of the PCE.

PREMISES AFFECTED – 32-02 Linden Place, southerly block front of 32nd Avenue, between Farrington Street and Linden Place, Block 4950, Lot 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

395-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah Contract Vendee, owner; Meyer Unsorfer, lessee.

SUBJECT – Application June 16, 2006 – Request for a re-opening and amendment to a previously-granted variance (§ 72-21) that allowed bulk waivers for a new house of worship in an R5 district. The proposed amendment includes the following: (1) increase in floor area and FAR, (2) increase in perimeter wall height; and (3) minor reduction in front yard provided.

PREMISES AFFECTED – 1232 54th Street, southwest side 242'-6" southeast of the intersection formed by 54th and 12th Avenue, Block 5676, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 10 A.M., for decision, hearing closed.

48-05-BZ

APPLICANT – Wachtel & Masyr, LLP, for Bethune West Associates, LLC, owner.

SUBJECT – Application October 30, 2006 – Request for a re-opening and amendment of a previously granted zoning variance that allowed a fifteen- (15) and three- (3) story residential building with ground floor retail use (UG 6), sixty-four (64) dwelling units and sixty (60) accessory parking spaces in C1-7A and C1-6A zoning districts. The proposed amendment includes the following: (1) ground floor level to change from retail to residential use; (2) dwelling units to increase from 64 to 84; (3) minor increase in lot coverage; and (4) modifications to the building's height and setback.

PREMISES AFFECTED – 469 West Street, a/k/a 70 Bethune Street, West Street between Bethune Street and West 12th Street, Block 640, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jerry Johnson.

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ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for continued hearing.

85-06-BZY

APPLICANT – Sanford Solny, for Menachem Realty, Inc., owner.

SUBJECT – Application May 5, 2006 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a mixed use building under the prior R6 zoning district. New zoning district is R4-1.

PREMISES AFFECTED – 1623 Avenue “P”, northwest corner of Avenue “P” and East 17th Street, Block 6763, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Sanford Sulny.

For Opposition: Marisa Sasitorn.

For Administration: Narisa Sasitorn, Department of Buildings.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23, 2007, at 10 A.M., for continued hearing.

117-06-A

APPLICANT – Eric Palatnik, P.C., for Esther C. Wallerstein, owner.

SUBJECT – Application June 8, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 1373 East 13th Street, between Avenue N and Elm Avenue, Block 6742, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Amanda Derr, Department of Buildings

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a one-story enlargement of an existing two-story single-family dwelling; and

WHEREAS, a public hearing was held on this application on November 21, 2006 after due notice by publication in *The City Record*, with a continued hearing on December 5, 2006,

and then to decision on December 12, 2006; and

WHEREAS, the site was inspected by a committee of the Board including Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, the subject premises is a 3,486 sq. ft. site on the west side of East 13th Street, between Avenue N and Elm Street; and

WHEREAS, the premises is improved upon with a two-story single-family home; the addition of a third floor is in progress; and

WHEREAS, specifically, the proposed enlargement, a 1,417.68 sq. ft. third floor on top of the second floor of the existing home, is within the existing footprint; and

WHEREAS, the premises is currently located within an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the proposed enlargement complies with all the former R6 zoning district regulations, including yards, floor area, and height; and

WHEREAS, however, on April 5, 2006 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Midwood Rezoning; and

WHEREAS, because the site is now within an R4-1 district, the proposed enlargement creates non-compliances with front yard, floor area, and height regulations and therefore is not permitted; and

WHEREAS, specifically, the floor area is proposed to be increased from 3,095 sq. ft. to 4,512 sq. ft. (3,139 sq. ft., including an attic bonus, is the maximum permitted in the R4-1 district); and

WHEREAS, as to the required front yard, the proposed enlargement maintains the 2’-0” front yard (a ten-foot front yard is required in the R4-1 zoning district, yet none was required in the former R6 zoning district); and

WHEREAS, the applicant proposes to increase the perimeter wall height and total height to 35’-0” (25’-0” is the maximum perimeter wall height and 35’-0” is the maximum total height permitted in the R4-1 zoning district); and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed enlargement; and

WHEREAS, the applicant is requesting relief under the common law and constitutional theory of vested rights after it failed to obtain a reconsideration from DOB to allow work to continue; during the time that a reconsideration was sought, the statutory time limit to seek relief under ZR § 11-311 expired; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to valid permits; and

WHEREAS, on March 23, 2006, under DOB Application No. 302093598, DOB issued a permit (the “Permit”) to the owner to enlarge the existing home as discussed above; and

WHEREAS, on April 6, 2006, because of the zoning change, DOB issued a stop-work order on the Permit; and

WHEREAS, on May 4, 2006, DOB sent the applicant a ten-day notice to revoke approvals and permits based on

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objections raised by a special audit; and

WHEREAS, on May 10, 2006, DOB issued a stop-work order; and

WHEREAS, on November 13, 2006, DOB performed a special audit and issued objections; and

WHEREAS, at hearing, the applicant stated that a meeting had been scheduled with DOB on November 30, 2006 to resolve any outstanding objections and asked that DOB stay the intent to revoke until the meeting date; and

WHEREAS, subsequently, at the December 5, 2006 hearing, DOB stated that all objections had been resolved and that the Permit was valid; and

WHEREAS, since the Permit is valid, the Board may properly consider all work performed between the time of its issuance and the Enactment Date; and

WHEREAS, assuming that a valid permit has been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change, and where serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to enlargements specifically, in Bayswater Health Related Facility v. Karagheuzoff, 37 NY2d 408, the Court of Appeals held that a vested right had been acquired for a conversion of existing structures to nursing homes because the "main building had already been gutted, its roof and sidewalks opened and exposed to the elements ..."; and

WHEREAS, the Board notes that from these cases, it is apparent that such factors as tangible physical change are relevant to a finding of completion of substantial construction; and

WHEREAS, further, the Board agrees that, under the common law, a completion of substantial construction finding will depend, in part, upon a showing of actual construction work resulting in some tangible change to the structure being altered that is integral to the proposed work; and

WHEREAS, in written statements and testimony, the applicant represents that: (1) the owner would suffer serious economic harm if unable to complete the enlargement; (2) as of the Enactment Date, substantial construction had been completed; and (3) substantial expenditures were made after the

issuance of the Permit; and

WHEREAS, as to serious economic harm, the applicant represents that considerable planning and construction has been expended towards the completion of the enlargement and costs associated with such activities cannot be recouped if construction were not permitted to proceed; and

WHEREAS, specifically, the applicant states that the former roof above the second floor has been removed and replaced by the partially completed roof above the third floor during the construction of the enlargement, and cannot be replaced without considerable expense; and

WHEREAS, the applicant states that, even without such additional expenses, the owner has spent \$80,000.00 towards the total project cost of \$177,000.00; and

WHEREAS, the Board agrees that the owner would suffer serious economic harm if the enlargement were not permitted to be completed; and

WHEREAS, as to substantial construction, the applicant states that work on the proposed enlargement subsequent to the issuance of the Permit involved the following: (1) the removal of the roof above the second floor; (2) the framing of the third floor; (3) partial completion of the new roof; (4) the partial installation of the new sub-floor; and (5) the installation of windows; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: an affidavit from the architect stating the amount of work completed, a summary of construction costs, copies of cancelled checks to the construction company, and photographs of the site; and

WHEREAS, on its site visit, the Board observed the completed work described above; and

WHEREAS at hearing, the Board asked the applicant if any work had been performed on April 5, 2006 or at any time thereafter; and

WHEREAS, the applicant responded that no work had been done on or after the Enactment Date; and

WHEREAS, the Board has reviewed this documentation and agrees that it establishes that the afore-mentioned work was completed prior to the Enactment Date; and

WHEREAS, the Board concludes that based upon actual work performed under the Permit and its degree of complexity with relationship to the overall project, as well as based upon the fact that the work resulted in a tangible change to the building, that substantial construction has been completed sufficient to satisfy the general standards under the common law; and

WHEREAS, as to substantial expenditures, the applicant states that the expenditures made totaled \$80,000.00 of the total project cost of \$177,000.00 (46 percent); and

WHEREAS, in support of this claim, the applicant has submitted invoices, cancelled checks, and accounting statements, which the Board has reviewed and finds credible and sufficient to sustain the claim; and

WHEREAS, at hearing, the Board asked the applicant about \$50,000.00 in checks that had been written after the rezoning; and

WHEREAS, the applicant responded that \$30,000.00

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had been actually spent prior to the Enactment Date, but that a commitment had been made for another \$50,000.00, which was paid after the Enactment Date for work already performed; and

WHEREAS, based upon the above, the Board finds that the degree of work completed and expenditures incurred are sufficient to meet the common law vesting standard; and

WHEREAS, accordingly, the owner has met the standard for vested rights under the common law and is entitled to the requested extension of the Permit and all other related permits for construction of the proposed enlargements.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights and requesting a reinstatement of Alteration Permit No. 302093598, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement for one term of one year from the date of this resolution, to expire on December 12, 2007.

Adopted by the Board of Standards and Appeals, December 12, 2006.

139-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Ann Fitzsimmons, lessee.

SUBJECT – Application July 6, 2006 – Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of mapped street (Oceanside Avenue) and the proposed upgrade of an existing private disposal system is contrary to the Section 35 of the General City Law and the Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 1 Irving Walk, east side of Irving Walk at intersection of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 27, 2006, acting on Department of Buildings Application No. 402371287, reads in pertinent part:

“A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A2- The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application

on December 12, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated July 18, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 21, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated November 16, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 27, 2006, acting on Department of Buildings Application No. 402371287 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received July 6, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2006.

164-06-A

APPLICANT – Cozen O’Connor Attorneys, for Elba and Jeanette Bozzo, owners.

SUBJECT – Application July 26, 2006 – Appeal filed to challenging the Order of Closure issued by the Department of Buildings on June 30, 2006 pursuant to Administrative Code Section 26-127.2 regarding the use of the basement, first, second and third floor of the subject premises which constitutes an illegal commercial use in a residential district. PREMISES AFFECTED – 148 East 63rd Street, south side of East 63rd Street, 120’ east of Park Avenue, Block 1397, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Peter Geis.

For Administration: Ingrid Addison and Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Application denied.

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THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins and
Commissioner Ottley-Brown.....3

THE RESOLUTION: 1

WHEREAS, this is an appeal of a Order of Closure as to the subject premises, issued by the Commissioner of the Department of Buildings (“DOB”) on June 30, 2006 (the “Order”), brought by the owners (hereinafter “Appellant”); and

WHEREAS, after this appeal was filed and a first hearing was held, DOB brought an application under BSA Cal. No. 270-06-A to modify the certificate of occupancy (CO No. 26180, issued May 29, 1940; hereinafter the “CO”) for the four-story and cellar building located at the premises (the “Building”); and

WHEREAS, a public hearing was held on this appeal on September 26, 2006 after due notice by publication in *The City Record*, with a continued hearing on October 24, 2006, and then to decision on December 12, 2006; and

WHEREAS, the subject site is located on the south side of East 63rd Street, approximately 120 feet east of Park Avenue, and is currently located within an R8B zoning district; and

WHEREAS, the Building is approximately 17 feet wide and 60 feet deep, and has a cellar, a basement (which functions as the ground floor), and first, second, and third floors; and

WHEREAS, the basement and first floor are hereinafter collectively referred to as the “accessory office floors”; and

WHEREAS, the CO for the Building indicates the following: Cellar – Storage; Basement – Office (hotel doctor); 1st Story – Office (hotel manager); 2nd Story – Two (2) Furnished rooms; 3rd Story – Three (3) Furnished rooms; and

WHEREAS, the CO also indicates that the occupancy classification is “Multiple Dwelling, Class B”; and

WHEREAS, Appellant claims that the Building was built and is currently configured as one “unit”, and that there is no separation between the floors for different tenancies; and

WHEREAS, however, since no plans of the Building were submitted, there is no corroboration of this statement; and

HISTORY OF ACTUAL USE

WHEREAS, both Appellant and DOB agree that the Building was once both owned and used for business purposes by the Barbizon Hotel (hereinafter the “Barbizon”), located on the adjacent Lot 49, at 150 East 63rd Street; and

WHEREAS, DOB notes that the alteration application underlying the CO (Alt. No. 3320-1939) indicates that the two hotel offices on the accessory office floors, one for the Barbizon doctor and one for the Barbizon manager, were intended to be used in conjunction with the Barbizon, and that doors were to be cut in the walls between the Building and the Barbizon; and

WHEREAS, this alteration application also indicates that the Barbizon doctor would occupy the furnished rooms in the Building; and

WHEREAS, DOB also cites to a 1982 application for the conversion of the accessory office floors to a hotel dining room and conference room, as well as documents that indicate that the

successor hotel to the Barbizon used the Building for HVAC purpose,s serving the hotel, from 1994 to 1996; and

WHEREAS, notwithstanding the documents cited by DOB, Appellant claims that immediately prior to its purchase of the Building in 1996, it appeared to be used for offices, related storage, and as a living space for a property manager; and

WHEREAS, however, there is no documentary evidence to support a conclusion that the Building was not being used by the hotel on Lot 49 at any point prior to 1996; and

WHEREAS, thus, when Appellant took title to the Building in 1996, the Board concludes that it previously had been used exclusively in conjunction with the Barbizon and the successor hotel; and

PROCEDURAL HISTORY

WHEREAS, subsequent to purchasing the Building in 1996, Appellant rented the Building to a series of commercial tenants with no relation to the hotel building on Lot 49; and

WHEREAS, Appellant states that the current occupants of the site are commercial lessees who use the accessory office floors as primary business offices and the upper floors allegedly for occasional sleeping purposes; and

WHEREAS, DOB states that in July of 2005, in response to a complaint, an inspector visited the premises and observed Use Group (“UG”) 6 business offices on the basement, first, second and third floors of the Building; and

WHEREAS, DOB determined that such UG 6 business offices were not permitted in the subject R8B zoning district, and proceeded to enforce against Appellant pursuant to Administrative Code § 26-127.2, otherwise known as the Padlock Law; and

WHEREAS, in sum and substance, the Padlock Law provides DOB with the authority to declare illegal commercial uses in residential zoning districts to be a nuisance, and to then close such uses; and

WHEREAS, however, prior to the issuance of an Order of Closure, the Padlock Law provides that the owner is entitled to a hearing at the City’s Office of Administrative Trials and Hearings (“OATH”); and

WHEREAS, accordingly, a hearing was held before an OATH administrative law judge (“ALJ”) on April 4, 2006; and

WHEREAS, the ALJ, through a report dated June 29, 2006, recommended that the business uses present in the Building be closed; and

WHEREAS, subsequently, the Order was issued; and

WHEREAS, however, pursuant to the City Charter, Appellant may appeal the Order to the Board, and the Board has the authority to review the validity of the Order and the underlying issues *de novo*; it is not bound by any finding or determination of the OATH ALJ, nor is any other party; and
THE CERTIFICATE OF OCCUPANCY AND LEGAL USE FROM 1940 TO 1961

WHEREAS, in 1940, when the CO was issued, the site was within a residence district where transient residential uses such as furnished room houses were permitted as of right, but business office use was not; and

WHEREAS, presuming the CO was validly issued, the accessory office floors must have been accessory to the furnished rooms on the upper floors; they could not have been

1 Headings are utilized only in the interest of clarity and organization.

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independent business offices; and

WHEREAS, Appellant states, and the Board agrees, that the uses in the Building were not technically accessory uses to the Barbizon, because in 1940, the zoning code in effect did not allow accessory uses to be located on different tax lots; and

WHEREAS, however, DOB contends that the office floors did become accessory to the Barbizon later, due to a 1943 text amendment to the zoning code; and

WHEREAS, this amended text provides that a lot for zoning purposes did not have to be limited to a tax lot, but could include more than one tax lots; and

WHEREAS, specifically, this amended text reads “A ‘lot’ is a parcel or plot of ground which is or may be occupied by a building and accessory buildings including the open spaces”; and

WHEREAS, DOB argues that the accessory office floors became accessory to the Barbizon because of this text change; and

WHEREAS, the Board does not find this explanation sufficient, because the 1943 text is silent as to what a property owner must do to have the City recognize two tax lots as one lot for zoning purposes, and there is no indication in the record that the Barbizon took any affirmative step to gain such recognition; and

WHEREAS, nevertheless, DOB also argues that the two tax lots merged into one zoning lot as of 1961; and

THE LEGAL USE SINCE 1961

WHEREAS, upon adoption of the current ZR on December 15, 1961, the site was mapped within an R8 zoning district where UG 6 business offices are not permitted as of right; and

WHEREAS, DOB maintains, in sum and substance, that even if the Building was a stand alone transient residential and accessory use prior to 1961, after the new ZR was adopted, the accessory office floors became UG 5 hotel accessory uses and the furnished rooms became UG 2 residences; and

WHEREAS, as discussed above, DOB notes that as of 1961, the subject Lot 48 and the Barbizon site (Lot 49) were in joint ownership, the buildings on each lot were connected, and the uses in each building were interrelated; and

WHEREAS, thus, DOB states that the two lots became one zoning lot in 1961, based on this interrelation and pursuant to ZR § 12-10 (b) “zoning lot”, which provides that a zoning lot is a “tract of land consisting of two or more contiguous lots of record, located within a single block, which, on December 15, 1961 . . . was in single ownership”; and

WHEREAS, Appellant disputes this, noting that the metes and bounds for Lot 49’s various certificates of occupancy do not reflect Lot 48; normally, a certificate of occupancy should reflect the metes and bounds for the entire zoning lot; and

WHEREAS, DOB responds that one of the certificates does reflect the metes and bounds of Lot 48 as well, and contends that the other certificates are in error insofar as the metes and bounds are inaccurate; and

WHEREAS, the Board does not find that the certificates control the validity of a merger; that such certificates reflect error in the metes and bounds cannot invalidate the operation of law; and

WHEREAS, thus, the Board agrees that Lots 48 and 49 did become one zoning lot in 1961, and that the accessory office floors therefore became lawful non-conforming UG 5 hotel accessory uses; and

WHEREAS, further, as discussed below, even assuming *arguendo* that Appellant is correct in asserting that Lots 48 and 49 never became one zoning lot and that the Building remained an independent use, this would not affect the outcome of this matter; and

THE LEGALITY OF USE GROUP 6 BUSINESS USES

WHEREAS, the Board must consider whether there is any legal basis for the current use of the Building for UG 6 business office purposes, and if not, what the legal uses of the Building should be; and

WHEREAS, Appellant’s primary argument in support of its appeal of the Order is that the CO itself authorizes UG 6 business offices on the accessory office floors; and

WHEREAS, as already established, unrestricted business offices were not permitted on the site when the CO was issued because the site was within a residence district; and

WHEREAS, instead, in 1961, the accessory office floors, previously legal per the CO since they were transient residential accessory uses, became UG 5 hotel accessory uses; and

WHEREAS, while use of the accessory office floors for UG 5 hotel accessory use was lawfully non-conforming and therefore permitted to continue after 1961, pursuant to ZR 52-61, lawful non-conforming uses may not be discontinued for a period of more than two years; and

WHEREAS, by Appellant’s own admission, the accessory office floors have not been used for UG 5 hotel accessory use since at least 1996; instead, UG 6 business offices uses now occupy the accessory office floors as primary uses; and

WHEREAS, no provision in Article V of the ZR, which governs non-conforming uses, permits the conversion of UG 5 uses to UG 6 uses; and

WHEREAS, accordingly, the Board finds that the right to use the accessory office floors for UG 5 accessory uses has been discontinued and may not be reinstated, and that the UG 6 business offices that currently occupy the Building are illegal; and

WHEREAS, Appellant makes the following counter-arguments in support of its contention that the CO does not authorize hotel use, but instead authorizes unrestricted business office use: (1) there is nothing to indicate that the Building was ever used for public rentals; (2) the parenthetical description of the offices as “hotel” is not dispositive of the permitted uses, but rather raises an ambiguity as to what the permitted uses are, which is an ambiguity that must be resolved in favor of Appellant; (3) the ambiguity of the CO permits the current owner to choose the Use Group in which the offices should be categorized; and

WHEREAS, the Board notes that the fundamental supposition underlying these arguments is that when the CO was issued, it permitted unrestricted business office use and not transient residential and accessory uses; and

WHEREAS, as noted above, when the CO was issued, the site was within a residence district where business office use was not permitted; and

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WHEREAS, thus, acceptance of Appellant's position means that DOB issued the CO even though the proposed uses were contrary to zoning; and

WHEREAS, Appellant has not offered any rational explanation as to why DOB would issue a CO that lists illegal uses, nor any explanation as to why the Board should consider such uses legal now; and

WHEREAS, assuming that DOB intended for the CO to authorize business offices, the Board would find that the CO was invalidly issued as to the office floors, and that the existing business offices are still illegal; and

WHEREAS, however, it is more logical to presume that the CO was properly issued by DOB because it allowed transient residential and accessory uses, which were permitted as of right in a residence district in 1940; and

WHEREAS, moreover, the Board does not find any merit to the specific arguments; and

WHEREAS, first, a history of public rentals is not necessary for the accessory office floors to be characterized as UG 5 hotel accessory uses, since hotel accessory uses need not be rentable rooms; and

WHEREAS, second, while the Board agrees that the description of the offices on the CO, with the parenthetical references to "hotel manager" and "hotel doctor", is not controlling as to use, it is a strong indication that the Building and the Barbizon were used in conjunction, which provides the basis for DOB's conclusion that as of 1961, Lots 48 and 49 became one zoning lot and the accessory office floors became UG5 hotel accessory uses; and

WHEREAS, third, the Board disagrees that: (1) the CO is ambiguous as to the permitted uses within the Building; and (2) the placement of the Building's uses within a Use Group category is discretionary on the part of the current owner; and

WHEREAS, as noted above, Appellant argues that since DOB has failed to conclusively establish what the legal uses in the Building are, the owner has the option of selecting UG 6 business offices as the lawful non-conforming use for the accessory office floors; and

WHEREAS, Appellant cites to other certificates of occupancy for hotels in support of the contention that DOB now categorizes hotel offices as UG 6 and should do so here; and

WHEREAS, these certificates show that offices within certain hotels are categorized as UG 6; and

WHEREAS, however, DOB notes that the specific hotels cited by Appellant are all within commercial zoning districts where UG 6 uses are permitted as of right, which allows hotels to choose a UG 5 hotel accessory designation or a UG 6 business office designation; and

WHEREAS, therefore, Appellant's citation to these certificates in support of the proposition that an owner of a building may choose a UG 6 definition for prior hotel accessory offices where such offices are non-conforming and not legally established is erroneous; and

WHEREAS, instead, the option to choose a particular Use Group designation for a hotel accessory office is only available when the chosen Use Group is permitted in the particular zoning district; here, that is not the case; and

WHEREAS, in sum, the CO does not provide any basis

for the continuation of the illegal business offices currently occupying the Building; and

WHEREAS, the Board observes that Appellant never provided any colorable argument as to how the CO could authorize UG 6 unrestricted business offices after 1961 when such unrestricted offices were not permitted on the site prior to 1961; and

WHEREAS, the Board is unaware of any examples of a building that enjoys lawful non-conforming use status for a use that was expressly not permitted at the time that it came into existence; and

WHEREAS, in fact, the Board notes that ZR § 12-10 "non-conforming use" provides, in sum and substance, that a lawful non-conforming use is one that was lawful at the time a zoning change made it unlawful; again, that is not the case here; and

LEGAL USE OF THE PREMISES PRESUMING THAT LOTS 48 AND 49 ARE SEPARATE ZONING LOTS

WHEREAS, even if the Board did accept Appellant's argument that the adoption of the 1961 ZR did not merge Lots 48 and 49 and make the Building accessory the Barbizon, it would still reach the same result; and

WHEREAS, as noted above, when the CO was issued, the Building was occupied by stand-alone transient residential uses and accessory offices; and

WHEREAS, in 1961, assuming there was no merger of Lots 48 and 49, the office floors would have to be accessory to the furnished rooms, which means that they would be UG 2 accessory offices; and

WHEREAS, since the record indicates that the accessory office floors have not been used for residential accessory office purposes for at least a full two year period starting in 1996, such use was likewise discontinued; and

WHEREAS, Appellant, however, makes the supplementary argument that since no merger of Lots 48 and 49 occurred in 1961, the use of the Building could have been appropriately placed in UG 7 as a motel; and

WHEREAS, ZR § 12-10 "Motel or tourist cabin" reads "a motel or tourist cabin is a building or group of buildings which: (a) contains living or sleeping accommodations used primarily for transient occupancy; and (b) has individual entrances from outside the building to serve each such living or sleeping unit."; and

WHEREAS, Appellant notes that pursuant to ZR § 52-34, a non-conforming UG7 use may be converted to a non-conforming UG 6 use in an R8 zoning district; and

WHEREAS, Appellant contends that the conversion of the Building from UG 7 motel to UG 6 office was therefore lawful (even though never applied for at DOB) and should be allowed to continue; and

WHEREAS, however, Appellant has failed to explain why the use and configuration of the Building would meet the definition of a UG 7 motel; and

WHEREAS, the Board members, based upon personal experience with motels as opposed to other forms of transient residential occupancy, is aware of what motels are, and finds that the Building was definitely not a motel; and

WHEREAS, further, as noted by DOB, this explanation is

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contradicted by the parenthetical listings on the CO, which reads “hotel”, not motel; and

WHEREAS, also, assuming that Appellant is correct in asserting that there is no evidence of transient rental of the Building’s furnished rooms, it is difficult to understand why the Building should be characterized as a motel rather than as a UG 2 residence with accessory offices; and

WHEREAS, for the above reasons, the Board rejects the argument that the Building could ever appropriately be characterized as a UG 7 motel, either before or after 1961; and

CONCLUSION

WHEREAS, in sum, the Board concludes as follows: (1) the CO on its face does not authorize UG 6 unrestricted business office use, because such use was not permitted at the time the CO was issued; (2) the CO instead reflects permitted transient residential and accessory office use, since such use was permitted when the CO was issued; (3) when the 1961 ZR was adopted, Lots 48 and 49 became one zoning lot, the accessory office floors became lawful non-conforming UG 5 hotel accessory uses, and the furnished rooms became UG 2 residences; and (4) since any UG5 hotel accessory use of the accessory office floors has been discontinued for more than two years, the accessory office floors may now only be used for conforming uses allowed in the R8B zoning district; and

WHEREAS, further, assuming *arguendo* that Lots 48 and 49 did not become one zoning lot as of 1961, the Board would conclude as follows: (1) the uses within the Building constituted lawful conforming transient residential and accessory office uses prior to 1961; (2) as of 1961, such uses could not properly be characterized as UG 7 motel uses; (3) instead, the furnished rooms became UG 2 and the office floors became UG 2 accessory offices, for purposes of application of Article V; and (4) since any residential accessory use of the accessory office floors has been discontinued for more than two years, the accessory office floors may now only be used for conforming uses allowed in the R8B zoning district.

Therefore it is Resolved that this appeal, which challenges an Order of Closure issued by DOB on June 30, 2006, is denied.

Adopted by the Board of Standards and Appeals, December 12, 2006.

169-06-A

APPLICANT – Timothy Costello, for Breezy Point Cooperative, Inc., owner; Raymond Wasson, lessee.

SUBJECT – Application August 10, 2006 – Proposed reconstruction and enlargement of an existing one family dwelling located partially within the bed of mapped street (Oceanside Avenue) contrary to Section 35 of the General City Law. R4 Zoning District.

PREMISES AFFECTED – 175 Oceanside Avenue, Block 16350, Lot 400, Borough of Brooklyn.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Timothy Costello.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 26, 2006, acting on Department of Buildings Application No. 402311173, reads in pertinent part:

“Respectfully request to erect a new building to replace an existing dwelling located on a site partially within the bed of a mapped street and contrary to General City Law 35.”; and

WHEREAS, a public hearing was held on this application on December 12, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated August 16, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated September 26, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated November 16, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 26, 2006, acting on Department of Buildings Application No. 402311173 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received November 22, 2006”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2006.

270-06-A

APPLICANT – Commissioner of New York City Department of Buildings.

OWNER: Elba & Jeanette Bozzo

LESSEE: Relais and Chateaux

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SUBJECT – Application October 5, 2006 – to revoke Certificate of Occupancy #26180, on the grounds that the non conforming Use Group 5 of the premises has been discontinued for a period of two or more years and therefore has lapsed pursuant to ZR § 52-61

PREMISES AFFECTED – 148 East 63rd Street, 120’ from south east corner of Lexington Avenue and East 63rd Street, Block 1397, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Opposition: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application to modify certificate of occupancy No. 26180, issued May 29, 1940 (hereinafter the “CO”) for the four-story and cellar building located at the premises (the “Building”), which is located within an R8B zoning district; and

WHEREAS, the CO for the Building indicates the following: Cellar – Storage; Basement – Office (hotel doctor); 1st Story – Office (hotel manager); 2nd Story – Two (2) Furnished rooms; 3rd Story – Three (3) Furnished rooms; and

WHEREAS, the CO also indicates that the occupancy classification is “Multiple Dwelling, Class B”; and

WHEREAS, this case was brought by the Department of Buildings (“DOB”) subsequent to the commencement of an appeal of an Order of Closure as to the Use Group 6 businesses located at the subject premises, issued by the Commissioner of DOB on June 30, 2006 (the “Order”); this appeal was brought under BSA Cal. No. 164-06-A by the owners of the premises; and

WHEREAS, initially, DOB asked that the Board revoke the CO as part of its determination of the appeal of the Order; however, the Board found that it was more appropriate for DOB to bring the instant application; and

WHEREAS, thus, after an initial hearing was held on the appeal, DOB brought this application, and the two matters were heard concurrently thereafter; and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in *The City Record*, and then to decision on December 12, 2006; and

WHEREAS, for the reasons set forth in its resolution for BSA Cal. No. 164-06-A, decided the date hereof, the Board finds that the non-conforming status of the Building’s basement and first floor as Use Group 5 hotel accessory use has lapsed for a period of more than two years, and that the business uses currently occupying the Building are unlawful; and

WHEREAS, accordingly, since the CO only authorizes hotel accessory uses on these floors and the right to such uses has been terminated, the CO must be modified, and these floors of the Building may only be occupied hereafter by conforming

uses permitted in the subject R8B zoning district.

Therefore it is Resolved that this application for modification of certificate of occupancy No. 26180, to eliminate “Office (hotel doctor)” from the basement listing, and “Office (hotel manager)” from the first floor listing, is granted.

Adopted by the Board of Standards and Appeals, December 12, 2006.

231-06-BZY

APPLICANT – Rothkrug Rothkrug and Spector, for Medhat M. Hanna, owner.

SUBJECT – Application September 11, 2006 – Extension of time to complete construction and obtain a Certificate of Occupancy for a minor development under (11-332) for a single family home. R3-1 zoning district.

PREMISES AFFECTED – 102 Greaves Avenue, intersection of Greaves and Dewey Avenue, Block 4568, lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a single-family home under construction at the subject premises; and

WHEREAS, a public hearing was held on this application on November 21, 2006, after due notice by publication in *The City Record*, and then to decision on December 12, 2006; and

WHEREAS, the subject premises is located at the intersection of Greaves Avenue, Dewey Avenue, and Dewey Place; and

WHEREAS, the premises is located within an R3-1 zoning district, which was affected by the enactment of the Lower Density Growth Management Text Amendments; and

WHEREAS, the development complied with the relevant R3-1 zoning district parameters prior to the enactment of the text amendments; and

WHEREAS, however, on August 12, 2004 (hereinafter, the “Enactment Date”), the City Council voted to adopt the text amendments, which resulted in a change to certain of the subject R3-1 zoning district parameters; and

WHEREAS, as of that date, foundation construction had progressed, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Board to determine that construction may continue under such circumstances; and

WHEREAS, the Board made its initial determination as to the application on June 7, 2005; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of

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occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-332; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of one building as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the new building permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, at hearing, the Board asked the applicant to provide a written narrative describing the completed work; and

WHEREAS, in response, the applicant submitted a timeline of the work completed with the associated source and cost of the work, which includes general construction, plumbing, electrical, and site work; and

WHEREAS, in support of this timeline the applicant has submitted the following: photographs of the site, which show a nearly completed home, and financial statements; and

WHEREAS, the Board has reviewed all documentation

and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, the Board notes that the actual completion of physical construction is substantial in itself, in that it resulted in tangible above-grade construction; and

WHEREAS, specifically, the Board notes, that the home appears to be almost complete and that other completed work includes the running of utilities, septic, and water, as well as grading and other site planning; and

WHEREAS, at hearing, the Board asked the applicant how much additional time was required to complete the construction and obtain a certificate of occupancy; and

WHEREAS, the applicant responded that the work could be completed and the certificate of occupancy obtained within one year; and

WHEREAS, the applicant represents that there have been delays associated with connecting the site to certain utility providers; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid is \$192,995 and remaining costs are approximately \$45,000; in support of this claim, the applicant has submitted a financial statement, invoices, and cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a nine-month extension for completion of construction, pursuant to, ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 500695606, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of twelve months from the date of this resolution, to expire on December 12, 2007.

Adopted by the Board of Standards and Appeals, December 12, 2006.

84-06-BZY

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR §11-331 for a four story mixed use building. Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.

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PREMISES AFFECTED – 1472 East 19th Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.

Jeffrey Mulligan, Executive Director

Adjourned: 10:40 A.M.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and David Shteirman.

For Opposition: Mark J. Kurzman and Joel Cohen.

For Administration: Angelina Martinez, Department of Buildings.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 10 A.M., for continued hearing.

166-06-BZY

APPLICANT – Eric Palatnik, P.C., for Mujahid Mian, owner.
SUBJECT – Application July 28, 2006 – Proposed extension of time (§11-331) to complete construction of a minor development for a multi-family building. Prior zoning was R4 zoning district and new zoning is R4-A as of June 29, 2006.

PREMISES AFFECTED – 84-59 162nd Street, south of the corner formed by the intersection of 84th Drive and 162nd Street, Block 9786, Lot 7, Borough of Queens

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik and Zan Angelides.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 30, 2007, at 10 A.M., for decision, hearing closed.

182-06-A thru 211-06-A

APPLICANT – Stadtmauer Bailkin, LLP, for Beachfront Community, LLC, owner.

SUBJECT – Application August 22, 2006 – An appeals seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R5 Zoning district. Premises is located in an R4-A Zoning district.

PREMISES AFFECTED – Beach 5th Street, Beach 6th Street and Seagirt Avenue, bound of Seagrit Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west Reynolds Channel to the south, Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67 and 68; Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67 and 69 Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Steve Sinacori and Mitchell Ross.

For Opposition: Frances Tuccio and Donald J. Murphy, Jr..

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for continued hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 12, 2006
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

290-04-BZ

APPLICANT – Stuart A. Klein, Esq., for Alex Lokshin – Carroll Gardens, LLC, owner.

SUBJECT – Application August 20, 2004 – under Z.R. §72-21 to permit, in an R4 zoning district, the conversion of an existing one-story warehouse building into a six-story and penthouse mixed-use residential/commercial building, which is contrary to Z.R. §§22-00, 23-141(b), 23-631(b), 23-222, 25-23, 23-45, and 23-462(a).

PREMISES AFFECTED – 341-349 Troy Avenue (a/k/a 1515 Carroll Street), Northeast corner of intersection of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Adopted by the Board of Standards and Appeals, December 12, 2006.

359-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application December 15, 2006 – Special Permit under Z.R. §73-211 – to allow an existing gasoline service station with accessory convenience store in an R5/C2-2 zoning district.

PREMISES AFFECTED – 1927-1933 Flatbush Avenue, northeast corner of Flatbush Avenue and Kings Highway, Block 7819, Lots 20 and 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 17, 2005, acting on

Department of Buildings Application No. 300167682, reads in pertinent part:

“Continued use of the gasoline service station with accessory uses at the premises is not permitted as-of-right in a C2-2 (R5) zoning district as per section 32-00 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 73-211, to permit the legalization of an existing automotive service station within a C2-2 (R5) zoning district; a portion of the site is the subject of a prior variance; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, and then to decision on December 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application on the condition that the sale of alcoholic beverages be prohibited at the site and, citing concerns about traffic congestion, that the site not be used for “dollar van” (independently-owned passenger vans) parking; and

WHEREAS, the Board notes that the Community Board’s request that no alcoholic beverages be sold at the site is beyond the scope of the Board’s authority to impose; and

WHEREAS, the premises is located on the northeast corner of Flatbush Avenue and Kings Highway; and

WHEREAS, the subject site has a total lot area of 11,047.5 sq. ft., and comprises two lots (Lots 20 and 25); and

WHEREAS, the site is currently occupied by a gasoline service station with an accessory building for the attendant station and a small sales area; and

WHEREAS, on July 16, 1940, under BSA Cal. No. 407-40-BZ, the Board granted a variance to permit, partly in a residence and partly in a business district, the reconstruction of a gasoline service station with accessory uses on lot 20; and

WHEREAS, subsequently, at various times, the grant was amended and extended; and

WHEREAS, most recently, on August 10, 1993, the Board granted an amendment to permit certain site modifications including the conversion of an accessory building to a convenience store, and to permit an extension of term for a term of ten years, which expired on March 19, 2002; and

WHEREAS, the applicant now seeks a ten-year extension of term; and

WHEREAS, however, in September 2003, the owner purchased the adjacent lot (lot 25) and modified the site to incorporate the new lot into the existing gasoline service station use; and

WHEREAS, the applicant represents that lot 25 has 1,250 sq. ft. of lot area and is used for accessory parking and to improve the traffic flow at the site; and

WHEREAS, the applicant now seeks to legalize the enlargement of the site to include lot 25 and to legalize the associated site modifications; and

WHEREAS, because the applicant has enlarged the site, a

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new special permit is required; and

WHEREAS, the required findings for the special permit for gasoline service stations in certain districts, pursuant to ZR § 73-211, include the following: (1) that the site has a minimum lot area of 7,500 sq. ft., (2) that any facilities for auto repair and washing be located within an enclosed building, (3) that five reservoir parking spaces be provided, (4) that means of ingress and egress are designed so as to cause minimum obstruction, (5) that screening be provided along lot lines adjoining residential districts, and (6) that signage comply with applicable district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the gasoline service station, as currently operating, complies with these requirements for the special permit, except as to two outstanding issues that merited further attention; and

WHEREAS, first, at hearing and in response to the Community Board's concern, the Board asked the applicant whether passenger vans impermissibly used the site as a base of operation and thereby negatively impacted the site and surrounding area; and

WHEREAS, the applicant responded that the site owner does not permit the vans to use the site and will forbid them from using accessory parking spaces; and

WHEREAS, the applicant submitted a letter from the owner stating that he is taking measures to remedy the problem of vans misusing the site; the applicant also submitted a photograph of a sign posted at the site indicating that the vans are not permitted there; and

WHEREAS, second, the Board asked the applicant to confirm that the signage on the canopy was permitted; and

WHEREAS, the applicant responded that the signs would be removed from the canopy and that all signage remaining at the site would match the approved signage; and

WHEREAS, accordingly, the applicant has submitted sufficient evidence that the findings set forth at ZR § 73-211 have been met; and

WHEREAS, the Board notes that the legalization of the gasoline service station will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-211 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA016K, dated August 23, 2006; and

WHEREAS, the EAS documents show that the continued

operation of the gasoline service station would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the gasoline service station will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-211 and 73-03, to permit in a C2-2 (R5) zoning district the legalization of an existing gasoline service station, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 19, 2006"-five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the expiration of the prior grant, under BSA Cal. No. 407-40-BZ, expiring on March 19, 2012;

THAT signage shall comply with C2-2 zoning district regulations and be limited to that indicated on the BSA-approved plans;

THAT the accessory parking shall not be used for commercial passenger van operations;

THAT a sign shall be posted at the site stating that commercial passenger vans are not permitted to use the accessory parking spaces for business operations;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the site shall be maintained clean and free of debris and graffiti;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2006.

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51-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Rivoli Realty Corp., owner.

SUBJECT – Application March 31, 2006 – Variance under Z.R (§72-21) on a lot consisting of 20,100 SF, and improved with a 13,384 SF one-story commercial structure, in a C1-2/R2 district, permission sought to legalize dance studio and to permit the operation of a physical culture establishment in a portion of the cellar. No parking provided on the premises.

Sections: 32-18 dance studio (UG 9); and 32-00 PCE.

PREMISES AFFECTED – 188-02/22 Union Turnpike, south side of Union Turnpike of 188th and 189th Streets, Block 7266, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 14, 2006, acting on Department of Buildings Application No. 402279495, reads in pertinent part:

- “1. Dance School (Use Group 9) is not permitted in a C1-2 in R2 zoning district and is contrary to 32-18 ZR
2. Physical Culture Establishment is not permitted in a C1-2 in R2 zoning district and is contrary to 32-00 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in a C1-2 (R2) zoning district, the operation of a Physical Culture Establishment (PCE), contrary to ZR § 32-00, and the legalization of an existing dance studio (Use Group 9), contrary to ZR § 32-18; and

WHEREAS, a public hearing was held on this application on November 21, 2006, after due notice by publication in the *City Record*, and then to decision on December 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 8, Queens, recommends approval of the application and suggests that there be a seven-year term associated with the variance; and

WHEREAS, the site is located on the south side of Union Turnpike between 188th Street and 189th Street, with 201 feet of frontage along Union Turnpike and 100 feet of frontage along both 188th Street and 189th Street; and

WHEREAS, the subject site has a total lot area of approximately 20,139.5 sq. ft.; and

WHEREAS, the site is currently improved upon with a 13,384 sq. ft. one-story commercial building with an additional 16,331 sq. ft. of floor space in the cellar; and

WHEREAS, the building is occupied with several commercial uses which occupy, in total, the 13,384 sq. ft. of floor area on the first floor; and

WHEREAS, the portions of the building that are the subject of this application are: (1) the existing dance school, which occupies 1,198 sq. ft. of floor area on the first floor and 3,472.85 sq. ft. of space in the cellar, and (2) the vacant former bowling alley, which occupies 8,646.81 sq. ft. of space in the cellar; and

WHEREAS, the two subject cellar areas are adjacent to each other and are located on the Union Turnpike/189th Street side of the building; and

WHEREAS, the applicant now seeks a variance to legalize the dance studio located in the cellar and on the first floor and to permit the proposed operation of a PCE in the former bowling alley space; and

WHEREAS, the dance studio, which has been operating in its present location for 30 years, would not be enlarged; and

WHEREAS, the applicant states that the proposed PCE space will require a complete renovation and will have one entrance on Union Turnpike and one entrance on 189th Street; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the existing building is obsolete, (2) the cellar space does not have street frontage, and (3) the majority of the cellar space was designed to be income-generating; and

WHEREAS, as to the obsolescence of the building, the applicant states that the building was constructed in 1939 and the cellar space was designed to be operated as a bowling alley; and

WHEREAS, the applicant represents that a bowling alley operated in the cellar for more than 50 years, however, in recent years, the small bowling facility was unable to compete with new larger bowling facilities; and

WHEREAS, as to the limitations of the cellar space, the applicant states that the space is not appropriate for office or retail use as it does not have any windows or street frontage; and

WHEREAS, the applicant represents that the owner has engaged in a number of unsuccessful marketing efforts to rent the space, but that it has remained vacant for seven years since the bowling alley’s departure; and

WHEREAS, as to the intended use of the space, the applicant asserts that the feasibility plan for the entire building when it was built relied on the use of the subject cellar space as a bowling alley; and

WHEREAS, specifically, the applicant represents that the cellar was designed to be income generating and, in support of that claim, notes that utilities were installed in the cellar and substantial resources have been invested towards improving the space in order to secure it as a viable source of income rather than as standard accessory storage space; and

WHEREAS, the applicant represents that there is no viable as of right use of the subject cellar space because, as noted above, it cannot be marketed for office or retail space given its

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lack of commercial presence on the street, and it is not configured so as to be accessible from the other first floor retail uses; and

WHEREAS, further, the applicant asserts that even if the space was renovated and made accessible from the first floor retail uses, these retail uses do not require such large accessory storage spaces and any additional rental income would be minimal; and

WHEREAS, the Board agrees that the cellar was designed as an integral component of the overall building and that the loss of income generated by its use has a significant impact on the building's feasibility; and

WHEREAS, therefore, the applicant has determined that a PCE is the only viable tenant that would be able to use the irregular sub-grade space and provide the building owner with a feasible amount of rental income, as was contemplated with the bowling alley; and

WHEREAS, as to the dance studio, the applicant similarly asserts that the space which has been used as a dance school for the past 30 years has become an integral part of the overall building program; and

WHEREAS, the applicant notes that the majority of the dance school space is located in the cellar, which, as already noted, has proven to be unmarketable to an office or retail user; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no possibility that the development of the property in conformance with the applicable use regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming commercial use, which includes the retrofitting of the first floor dance studio to accommodate a conforming retail use and the conversion of the entire cellar space to accessory retail storage; and

WHEREAS, the applicant concluded that the commercial scenario would not realize a reasonable return; and

WHEREAS, at hearing, the Board asked the applicant to explain the rental assumptions about the first floor space versus the cellar space; and

WHEREAS, the applicant responded that that the figures provided for the cellar reflect actual use, not accessory use, because it is assumed that accessory commercial use would not provide significant additional income; and

WHEREAS, the applicant also reiterates that until the bowling alley vacated the cellar, revenue had always been derived from use of the cellar space, since it was designed to be revenue-producing; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject building's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use

requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant states that the dance studio use has proven compatible with the commercial uses that have existed in the building since its inception, and that both the dance studio and the PCE are consistent with other commercial uses on Union Turnpike; and

WHEREAS, further, the applicant represents that there will be only minor changes to the exterior of the building; and

WHEREAS, the Fire Department stated that if the PCE and dance school use are permitted, it recommends that those spaces be fully sprinkle red and that a full interior fire alarm and smoke detection system be installed; and

WHEREAS, the applicant agrees to these conditions; and

WHEREAS, additionally, the Board asked the applicant to identify a second means of egress from the proposed PCE space as it appeared that one means of egress was through the cellar-level coatroom, which is not permitted; and

WHEREAS, in response, the applicant submitted revised drawings reflecting the removal of the coatroom, and the creation of an acceptable second means of egress for the PCE; and

WHEREAS, also, the applicant indicated that a handicapped accessible lift would be provided for access to the cellar PCE space; and

WHEREAS, at hearing, the Board asked the applicant if the billboards on the sides of the building were permitted; and

WHEREAS, the applicant responded that the billboards were illegal and have been removed; and

WHEREAS, the applicant submitted photographs of the building reflecting the removal of the billboards; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the Department of Investigation performed a background check on the corporate owner and operator of the PCE and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental

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review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06-BSA-091Q; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, in a C1-2 (R2) zoning district, the operation of a PCE, contrary to ZR § 32-00, and the legalization of an existing dance studio (Use Group 9), contrary to ZR § 32-18, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 12, 2006"- (4) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the term of this grant shall be limited to ten years, and shall expire on December 12, 2016, subject to further renewal;

THAT, the hours of the physical culture establishment shall be limited to 5:00 a.m. until 11:00 p.m., daily;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy be obtained within two years from the date of this grant;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT means of egress from the cellar shall be as reviewed and approved by DOB;

THAT fire safety measures, including full sprinkle ring, shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2006.

104-06-BZ

APPLICANT– Eric Palatnik, P.C., for Martin Menashe, owner.

SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to partially legalize and partially alter a long standing enlargement to an existing single family residence which is contrary to ZR 23-141 for floor area and open space and ZR 23-46 for side yard requirement. The premise is located in an R-2 zoning district. This current application filing has a previous BSA Ca. #802-87-BZ.

PREMISES AFFECTED – 3584 Bedford Avenue, north of Avenue "O", Block 7678, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 11, 2006, acting on Department of Buildings Application No. 302072049, reads in pertinent part:

“Proposed enlargement of existing home is contrary to:

1. ZR Section 23-141 (Floor Area)
2. ZR Section 23-141 (Open Space)
3. ZR Section 23-46 (Side Yards)
4. ZR Section 23-47 (Rear Yard).”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the proposed legalization of an enlargement to a single-family dwelling, which does not comply with the zoning requirements for floor area, open space, and side and rear yards, contrary to ZR §§ 23-141, 23-46, and 23-47; and

WHEREAS, a public hearing was held on this application on September 12, 2006, after due notice by publication in *The City Record*, with continued hearings on October 17, 2006 and November 21, 2006, and then to decision on December 12, 2006; and

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WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject lot is located on the west side of Bedford Avenue, north of Avenue O; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, however, the applicant enlarged the previously existing home without first obtaining the special permit; and

WHEREAS, further, the owner of the subject premises enlarged the existing home illegally without the requisite DOB permits; and

WHEREAS, initially, the applicant brought a variance application, under BSA Cal. No. 802-87-BZ, to legalize the enlargement in its entirety; and

WHEREAS, on January 17, 1989, the Board denied the variance application; the application is now for a home enlargement under the special permit; and

WHEREAS, the existing enlarged building at the site is a two-story with attic single-family home with a perimeter wall height of 22'-6" and a total height of 35'-1"; and

WHEREAS, the applicant proposes to legalize the existing two-story enlargement (10'-0" by 19'-1 1/4") at the front of the home and to modify the existing one-story enlargement (7'-1/2" by 9'-9") at the rear of the home so that it complies with the requirements for a greenhouse, as defined by DOB; and

WHEREAS, the subject lot has a total lot area of 4,000 sq.ft., and is occupied by a 2,915.47 sq. ft. (0.7289 FAR) home; the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant did not submit complete information about the parameters of the building prior to the pre-1987 enlargement; and

WHEREAS, the enlargement of the home increased the degree of non-compliance as to side yards; one side yard of 3'-1 1/4" and one side yard of 10'-10 3/4" are provided (side yards with a total width of 13 feet and a width of 5 feet for one yard are the minimum required); and

WHEREAS, additionally, the existing home provides open space of 2,840.26 sq. ft. (3,000 sq. ft. is the minimum required) and an open space ratio of 85.1 percent (150 percent is the minimum required); and

WHEREAS, before the subject enlargement, the rear of the home was irregularly shaped with a 16'-3" wide portion extending further into the rear yard, which resulted in a 17'-9 1/4" rear yard along that portion of the home; historically, there was also a 9'-9" wide notch along the rear of the home, which resulted in a 24'-9 3/4" rear yard along that portion of the home (a rear yard with a depth of 30 ft. is the minimum required); and

WHEREAS, as built, the enlargement at the rear fills in the notch and creates a straight line across the rear of the home, which results in a 17'-9 1/4" rear yard for the width of

the home; and

WHEREAS, in the initial submission, the applicant proposed to maintain the rear enlargement as built; and

WHEREAS, the Board directed the applicant that, as per the special permit, it could not approve any new development that encroached into the required 20'-0" rear yard; the Board notes that the 17'-9 1/4" rear yard along the 16'-3" wide portion of the home is an existing non-complying condition; and

WHEREAS, the applicant asserts that the enlargement at the rear of the home could be categorized as a greenhouse and was therefore a permitted obstruction into the required rear yard; and

WHEREAS, at hearing, the Board expressed concern about the characterization of the rear enlargement as a greenhouse, as it appeared to be built of masonry; and

WHEREAS, further, the Board noted that the required 20'-0" rear yard could be provided for a portion of the rear of the home if a portion of the rear enlargement were eliminated; and

WHEREAS, the Board notes that the applicant filed plans with DOB to legalize the front enlargement and modify the rear enlargement so as to meet the definition of a greenhouse and that DOB denied the plans; and

WHEREAS, the Board directed the applicant to remove the portion of the rear enlargement which encroached into the required rear yard from the plans because a determination as to whether or not the enlargement could be classified as a greenhouse was not appropriately before the Board and would have to be sought at DOB; and

WHEREAS, in response, the applicant removed the portion of the rear enlargement that encroached into the required 20'-0" rear yard and provided a 20'-0" rear yard along that portion of the home; and

WHEREAS, the applicant notes that the portion of the enlargement which is sought to be defined as a greenhouse occupies approximately 21.74 sq. ft. of floor area and that even if the rear enlargement is deemed a permitted obstruction, its floor area would be included in the total floor area of the home; and

WHEREAS, further, the applicant notes that with the removal of this portion of the enlargement, the total floor area of the home would be reduced from 2,915.47 sq. ft. to 2,893.73; and

WHEREAS, however, the applicant requests that the Board approve a total floor area for the home of 2,915.47 sq. ft. so that there will not be a conflict between the approved floor area with and without the greenhouse, if the greenhouse is approved by DOB; and

WHEREAS, the Board agreed to approve a total floor area of 2,915.47 on the condition that if DOB determines that the rear enlargement does not qualify as a greenhouse, then the 21.74 sq. ft. of floor area associated with it cannot be allocated to any other enlargement to the home and must be subtracted from the total floor area; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit in the subject

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zoning district; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed legalization of an enlargement to a single-family dwelling, which does not comply with the zoning requirements for floor area, open space, and side and rear yards, contrary to ZR §§ 23-141, 23-46, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 8, 2006"-(9) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 76.02 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the parameters of the building: a total floor area of 2,915.47 sq. ft., a total FAR of 0.7289, a perimeter wall height of 22'-6", a total height of 35'-1", an open space ratio of 85.1 percent, one side yard of 3'-1 1/4", one side yard of 10'-10 3/4", a front yard of 19'-11", and a rear yard of 17'-9 1/4" along a 16'-3" wide portion of the rear of the home and a rear yard of 20'-0" along a 9'-9" wide portion of the rear of the home, all as illustrated on the BSA-approved plans;

THAT any greenhouse shall be as approved by DOB;

THAT if DOB does not approve a greenhouse at the rear of the house, the floor area associated with it must be eliminated and the total floor area of the home shall be 2,893.73;

THAT any porches shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2006.

121-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application June 12, 2006 – Application filed pursuant to sections 11-411 & 11-12 of the zoning resolution to request the re-establishment of the previously granted variance permitting the operation of an automotive service station in a R7-1 zoning district and to legalize certain minor amendments made to the previously approved plans.

PREMISES AFFECTED – 495 East 180th Street, northwest corner of the intersection formed between 180th Street and Bathgate Avenue, Block 3047, Lot 21, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Richard lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated May 16, 2006, acting on Department of Buildings Application No. 201049926, reads in pertinent part:

"Continued use of the gasoline service station with accessory uses at the premises is not permitted as-of-right in R7-1 zoning district and is contrary to the prior BSA grant 868-59-BZ."; and

WHEREAS, this is an application for a reinstatement of a prior Board approval, pursuant to ZR § 11-411, and a legalization of certain site modifications, pursuant to ZR § 11-412; and

WHEREAS, a public hearing was held on this application on October 24, 2006, after due notice by publication in the *City Record*, with a continued hearing on November 21, 2006, and then to decision on December 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

WHEREAS, the premises is located on the northwest corner of 180th Street and Bathgate Avenue, and is within an R7-1 zoning district; and

WHEREAS, the subject zoning lot has a total lot area of approximately 8,160 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,638 sq. ft. gasoline service station, with accessory parking for vehicles awaiting service; and

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WHEREAS, on June 28, 1960, under BSA Cal. No. 868-59-BZ, the Board granted a variance to permit the reconstruction of the subject gasoline service station; and

WHEREAS, subsequently, the variance was amended and extended by the Board at various times; and

WHEREAS, most recently, on November 18, 1986, the Board permitted an extension of term for a term of ten years, expiring on June 28, 1995; and

WHEREAS, the applicant represents that the subject use has been located at the site on a continuous basis since the expiration noted above; and

WHEREAS, the applicant now proposes to reinstate the prior grant, legalize the existing use, and obtain a new ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant represents that there has been no enlargement to the zoning lot or the building, and the only changes to the site since the last grant are the removal and relocation of underground storage tanks, the installation of fencing, the relocation of two of the three curb cuts, the replacement of the single fuel dispenser island with two smaller islands, and the installation of a wider sidewalk along the entrance to the office/sales area; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for alterations to the site; and

WHEREAS, however, at hearing, the Board asked the applicant if the fence along the northeast corner of the site encroached onto the sidewalk; and

WHEREAS, the applicant submitted a revised site plan indicating that the fence would be relocated entirely within the property line; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA097X, dated June 5, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, during the April 1998 removal of fifteen underground petroleum storage tanks (USTs), it was determined through field screening that there was evidence of contamination on the site. The New York State Department of Environmental

Conservation (DEC) assigned a spill number to this case (Spill No. 97-13712). A subsurface investigation (which included taking soil boring and groundwater samples) was conducted on April 29, 2003, to determine the extent of this contamination. All soil boring locations were selected with the concurrence of DEC; and

WHEREAS, a Remediation Stipulation Agreement sent to the Applicant on June 30, 2003 was signed in August 2003 by the applicant (Getty Properties Corporation) and the DEC. Remediation using a Dual Phase Extraction System started in early 2006 and is continuing; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 11-411 and 11-412, for a reinstatement of a prior Board approval, an extension of term, and a legalization of site modifications; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received November 8, 2006"- (5) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on December 12, 2016;

THAT the lot shall be kept free of dirt and debris;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT remediation activities on the site shall continue on the site in accordance with the Stipulation Agreement and with any subsequent directives from the DEC;

THAT the layout of the property, location and size of the fence shall be as approved by the Department of Buildings;

THAT all signage shall comply with C1 zoning regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

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Adopted by the Board of Standards and Appeals,
December 12, 2006.

132-06-BZ

APPLICANT– Fried Frank Harris Shriver & Jacobson, LLP,
for 122 Greenwich Owner, LLC, owner.

SUBJECT – Application June 23, 2006 – Variance pursuant
to Z.R. §72-21 to allow an eleven (11) story residential
building with ground floor retail and community facility uses
on a site zoned C6-2A and C1-6. The proposed building
would contain 36 dwelling units and would be non-
complying with respects to floor area, lot coverage, rear yard,
height and setback, inner court, and elevator bulkhead
requirements; contrary to Z.R. §§ 23-145, 35-31, 23-47, 35-
24, 23-633, 23-851 and 33-42.

PREMISES AFFECTED – 122-136 Greenwich Avenue,
northeast corner of Greenwich Avenue and 8th Avenue, Block
618, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paulina Williams.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough
Commissioner, dated September 21, 2006, acting on
Department of Buildings Application No. 104328130, reads:

- “1. 23-145, 35-31 & 77-22 – Exceeds residential
floor area permitted in C1-6 zone and exceeds
residential maximum permitted floor area
calculation for overall site.
2. 23-145, 35-20, & 77-24 – Exceeds permitted
lot coverage in C1-6 zone on corner lot and on
interior lot and adjust maximum lot coverage
on overall site.
3. 23-47 and 35-20 – Does not provide 30’ rear
yard for interior lot.
4. 35-24(b)(3) – Recesses exceed 30% in base in
C6-2A zone and located within 30’ of the
corner.
5. 23-633(b) and 35-20 – Does not provide rear
setback on interior lot portion at maximum base
height.
6. 35-24(d), Table A and B – Exceeds maximum
building height in C6-2A and C1-6 zones.
7. 35-24(c)(1) – Provides shallower setback than
required fronting on a narrow street.
8. 23-851 and 35-20 – Does not provide minimum
dimension of 30’ for inner court.
9. 33-42 – Aggregate width of street walls of
elevator bulkhead exceeds 30’ width and
aggregate width times height exceeds four
times the width of the building street wall.”;

and

WHEREAS, this is an application under Z.R. § 72-21,
to permit, on a site partially within a C6-2A zoning district
and partially within a C1-6 zoning district, the proposed
development of a 5.88 Floor Area Ratio (FAR), seven and
eleven-story mixed-use retail/community facility/residential
building, with ground floor commercial space, a small
community facility space, and 36 dwelling units, which is
non-complying as to floor area and FAR, lot coverage, rear
yard, height and setback, inner court, street wall location and
elevator bulkhead requirements, contrary to Z.R. §§ 23-145,
35-31, 35-20 23-47, 35-24, 23-633, 23-851, 33-42, 77-22 and
77-24; and

WHEREAS, a public hearing was held on this application
on October 17, 2006 after due notice by publication in the *City
Record*, with a continued hearing on November 14, 2006, and
then to decision on December 12, 2006; and

WHEREAS, the premises and surrounding area had a
site and neighborhood examination by a committee of the
Board, consisting of Chair Srinivasan, Vice-Chair Collins, and
Commissioners Hinkson and Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan,
recommends disapproval of this application, and contends that
the site does not suffer a financial hardship; this argument is
discussed below; and

WHEREAS, Borough President Stringer, Council Member
Quinn, Assembly Member Glick, the Greenwich Village Society
for Historic Preservation, the Greenwich Village Community
Task Force, and certain individual neighbors all opposed this
application or certain aspects of it; and

WHEREAS, certain neighbors and area residents
supported the application; and

WHEREAS, the premises is located at the northeast
corner of Greenwich Avenue and 8th Avenue, with 54 feet of
frontage on 8th Avenue and 155 feet of frontage on
Greenwich Avenue, with a depth of 73’-2”, measured
perpendicularly from Greenwich to the parallel portion of the
rear lot line, and a depth of 80’-0”, measured perpendicularly
from 8th to the parallel portion of the rear lot line; and

WHEREAS, the total lot area is 10,697 sq. ft., with
approximately 5,424 sq. ft. within the C6-2A district, and
approximately 5,273 sq. ft. within the C1-6 district; and

WHEREAS, because of the site’s configuration at an
intersection, part of the site is considered an interior lot, and
part is considered a corner lot; and

WHEREAS, the site is also located within the
Greenwich Village Historic District, and the proposed
development has received a Certificate of Appropriateness
from the City’s Landmarks Preservation Commission, dated
September 6, 2006; and

WHEREAS, the site is currently used as a parking lot,
and has been for the past 60 to 70 years; and

WHEREAS, the site has been the subject of two past
Board actions; and

WHEREAS, in 1981, under BSA Cal. No. 428-81-BZ,
the Board granted a variance to allow the construction of a
mixed-use building that exceeded applicable FAR, open

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space, lot area, sky exposure, and rear yard obstruction requirements; and

WHEREAS, in 1985, this grant was amended to accommodate a purely residential building with a new massing scheme; and

WHEREAS, the 1985 grant allowed for a 14-story, 145 feet high building element at the north end of the site; and

WHEREAS, the applicant represents that the approved building was not constructed due to financial reasons; and

WHEREAS, in the C6-2A portion of the site, the proposed building has the following bulk parameters: eleven stories, a residential floor area of 32,257.84 sq. ft., a residential FAR of 5.95, a community facility floor area of 124.80 sq. ft., a community facility FAR of 0.02, a commercial floor area of 2,836.80 sq. ft., a commercial FAR of 0.52, a total floor area of 6.49, 75 percent lot coverage, 18 dwelling units, a maximum wall height of 85'-0", a total height of 128.36 ft., one 10 ft. setback, and an inner court of 15'-4"; and

WHEREAS, of these parameters, the following are non-compliant: total height (the maximum height permitted is 120'-0"); setbacks (a setback of 15'-0" is required at 85 feet); and interior court (an interior court of 30 ft. in depth is required); and

WHEREAS, in addition, the proposed building will provide approximately 34 feet of recess along the 8th Avenue frontage, with variations in the amount and location of recesses at each level of the street wall, for a total recess of approximately 63 percent of the 8th Avenue frontage and 100 percent for the band directly above the storefront; however, the maximum recess permitted is 30 percent above the height of 12 feet and within 30 feet of the corner; and

WHEREAS, finally, the dimensional limit of the mechanical roof bulkhead along the 8th Avenue frontage (40'-3" long and 15'-10" tall) violates the permitted dimensions for a bulkhead in the C6-2A district; and

WHEREAS, in the C1-6 portion, the proposed building has the following bulk parameters: seven stories, a residential floor area of 22,984.12 sq. ft., a residential FAR of 4.36, a community facility floor area of 105.60 sq. ft., a community facility FAR of 0.02, a commercial floor area of 4,583.04 sq. ft., a commercial FAR of 0.87, a total floor area of 5.25, 96 percent lot coverage on the corner lot portion, 78 percent lot coverage on the interior lot portion, 18 dwelling units, a maximum wall height of 60'-0", a total height of 83.71 ft., a rear yard of 24'-0", a setback of 10'-0" and no rear setback; and

WHEREAS, of these parameters, the following are non-compliant: the residential floor area and FAR (a residential floor area of 18,139 sq. ft. and a residential FAR of 3.44 are the maximums permitted); lot coverages (80 percent is the maximum on a corner lot, and 65 percent is the maximum on an interior lot); total height (a total height of 75'-0" is the maximum permitted); rear yard (a rear yard of 30'-0" is required); and setback (a setback of 15'-0" is required, and a 10 ft. rear setback is required at or below 60 ft.); and

WHEREAS, because the site is mapped within two zoning districts, certain provisions concerning such sites are

also violated; and

WHEREAS, specifically, over the entire site, the following parameters are non-compliant: the total residential floor area of 55,241 sq. ft. (50,791.60 sq. ft. is the maximum permitted); the total residential FAR of 5.16 (4.73 is the maximum permitted); and the lot coverages of 84 percent (corner) and 68 percent (interior) (80 percent and 66 percent are the maximums permitted); and

WHEREAS, because of the various non-compliances, the instant variance application was made; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in compliance with underlying district regulations: (1) the site is situated directly over the 8th Avenue subway tunnel for much of its area, with a subway tunnel easement only 11'-6" below grade, and the water table is only 18'-0" below grade; (2) the site is shallow, with varying depths of 73 and 80 feet; (3) the site is irregularly shaped; and (4) the site is split by two zoning districts; and

WHEREAS, the applicant states that the combination of the presence of the subway easement and the high water table compromises complying development, in that the conditions result in increased construction costs; and

WHEREAS, the applicant also notes that the location of the subway easement constrains the location of the vertical circulation core because it must be located outside of the tunnel footprint in the C6-2A portion of the site in order to provide access to all residential levels and the below grade levels; and

WHEREAS, the applicant notes that in a complying scheme, this results in a building with highly inefficient floor plates on the residential floors; and

WHEREAS, the applicant states that this inefficiency and the afore-mentioned construction costs can only be overcome with the additional residential FAR; and

WHEREAS, the applicant states that these conditions also allow for only one very short below grade level at the front portion of the site, which limits the amount of below grade space for mechanical systems, storage and amenities, requiring some of the mechanical spaces to be placed below the second floor slab in the commercial space, and contributing to the needed height waivers; and

WHEREAS, at the first hearing and in a subsequent letter, the applicant's expert provides more detail on the sub-grade hardships, explaining that no gain could be achieved by shifting the bulk of the building away from the portion of the site directly above the subway easement, since the structure is still prohibited from applying lateral forces on the top and the sides of the subway structure; and

WHEREAS, thus, a deep caisson foundation system and a thickened mat are required regardless of the building's location on the site; and

WHEREAS, the expert's letter also explains that the caissons must be installed in bedrock, utilizing rock bearing foundations, which further increases costs; and

WHEREAS, in any event, the Board observes that the underlying zoning requires placement of the building on the

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streetline, which means that an alternative placement would still require a variance; and

WHEREAS, such a design would likely not be approvable by LPC; and

WHEREAS, further, at the request of the Board, the applicant explained in greater detail how the limited height of the cellar affects the ability to locate certain mechanical elements below grade; and

WHEREAS, specifically, one of the applicant's experts submitted a letter that explained that because of the location of the subway easement, the vertical clearance in the cellar is too low to permit rerouting of various building services, and these services therefore must be installed in the ground floor ceiling space; and

WHEREAS, the letter also explains that for this reason, certain equipment also must be located in the mechanical bulkhead on the roof, thus necessitating the need for the bulkhead dimension variance; and

WHEREAS, finally, the applicant also established the uniqueness of the subway easement condition at the first hearing and in a subsequent submission, showing that on the subject block and within the subject neighborhood, only the subject site and the two sites adjacent to it (which are already developed) are located directly above the subway tunnel; and

WHEREAS, more specifically, the applicant explained that the subway easement is directly below the subject site for its full width, but then changes direction and only runs partially underneath other sites; and

WHEREAS, the Board notes that the subject site is the most significantly affected site in this regard, largely because of its corner location; and

WHEREAS, as to the shallow depths, the applicant notes that in combination with the required court yard and rear yard dimensions, the required 10 and 15 ft. setbacks from 8th Avenue to Greenwich Avenue, the rear setback, and the required lot coverages, these depths constrain the creation of floor plates such that they would be unable to sustain practical, marketable units; and

WHEREAS, the applicant notes that the required elevator cores, hallways and stairwells further constrain the floor plates; and

WHEREAS, the applicant concludes that the floor area and dimensional waivers reduce design inefficiencies by allowing for improved apartment layouts; and

WHEREAS, the Board observes from the submitted land use map that the site is one of the few in the area with such a shallow depth; and

WHEREAS, as to the irregular shape of the site, the Board observes that in addition to the curved frontage on the corner, the site has four other angles; and

WHEREAS, the applicant states that many of the units are irregularly shaped as well, which reduces efficiency, in terms of design, sell-out value and construction costs; and

WHEREAS, finally, as to the split zoning, the applicant notes that this exacerbates the irregular shape of the site, and also that the irregular massing attributable to the split zoning generates a high ratio of exterior perimeter wall to usable floor area, increasing the cost of exterior cladding by

approximately 10 percent from a typical site; and

WHEREAS, at hearing, the Board asked for further clarification as to why the street wall recess waiver was necessary; and

WHEREAS, in a subsequent letter, the applicant explained that the recesses were necessary to: (1) create an architectural design that would be approved by LPC as contextual with its surroundings; and (2) create a cohesive, sensitively detailed design that provides the building with an architectural character sufficient to sustain successful marketing at the projected rates reflected in the feasibility analysis; and

WHEREAS, specifically, the applicant notes that the waiver is only needed in the C6-2A portion of the site, where such recesses exceed the maximum permitted, in order to preserve the continuity of the recess design as provided on the C1-6 portion of the site; and

WHEREAS, the applicant concludes, and the Board agrees, that this design cohesiveness plays a fundamental role in the feasibility of the proposal; and

WHEREAS, the Board observes that the applicant has established each of the bases of uniqueness and justified the requested waivers through the submission of expert testimony, all of which the Board finds credible and persuasive; and

WHEREAS, accordingly, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict compliance with applicable zoning regulations; and

WHEREAS, the applicant submitted an initial feasibility study that analyzed a fully complying scenario, consisting of a seven and eleven story building, with retail and community facility on the first floor level and 33 residential condominium units on floors two through eleven; and

WHEREAS, the complying scenario provided 44,503 sq. ft. of residential floor area, 7,420 sq. ft. of retail floor area, and 230 sq. ft. of community facility floor area; and

WHEREAS, the applicant concluded that a complying development would not realize a reasonable return due to the site's constraints; and

WHEREAS, specifically, the applicant has identified significant premium costs related to the site's unique features that render a complying development infeasible; and

WHEREAS, at hearing, the Board questioned why the construction costs for an as-of-right building would be greater than the costs for the proposal, given that the proposal contemplates more floor area and greater height; and

WHEREAS, in response, the applicant submitted a letter from its contractor, which states that foundation, concrete, exterior façade, and labor costs are reduced under the proposed scenario, as the proposal avoids a core placement that exacerbates all of these cost items; and

WHEREAS, the opposition contends that the comparable land sales used in the feasibility analysis to establish site valuation, as well as the comparable retail rents used to establish sell out value, were improper in that they

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were not truly comparable; and

WHEREAS, in a submission dated November 28, 2006, the applicant explained that the site valuation was appropriately established by legitimate comparables, and that the sell out value was appropriately established by a review of retail rents in the vicinity of the subject property; and

WHEREAS, the Board has reviewed the submitted feasibility study and the subsequent submissions, and concludes that the comparables are credible, and that the methodology used to arrive at the site valuation and sell out value comports with accepted real estate valuation practice; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with the specified zoning provisions will provide a reasonable return; and

WHEREAS, the applicant states that the proposed variances, if granted, will not negatively affect the character of the neighborhood nor impact adjacent uses; and

WHEREAS, the applicant notes that the scale and character of the proposed building have been found to be appropriate by LPC; and

WHEREAS, additionally, the applicant notes that the proposed building is substantially shorter than the 17-story residential buildings directly south across Jackson Square, and the 20-story building at 8th Avenue and West 14th Street; and

WHEREAS, the applicant further notes that the front setbacks will be at complying heights; and

WHEREAS, moreover, in the C1-6 zone, the setback will relate to the cornice of the adjacent MTA substation; and

WHEREAS, finally, the applicant's expert notes that the bulkhead, though non-complying, is still compact for a building of this size, and will not negatively impact any adjacent uses; and

WHEREAS, the Board has reviewed the map and photos submitted with this application, and has also conducted its own site visit, and concludes that the proposed bulk and height of the building will be compatible with the existing conditions in the immediate neighborhood; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but instead results from the above-mentioned unique physical conditions; and

WHEREAS, as to minimum variance, the applicant states that without the dimensional variances, the vertical circulation core would have to be located over the subway tunnel, increasing construction costs and decreasing revenue due to unreasonably shallow floor plates; and

WHEREAS, without the FAR waiver, construction costs could not be overcome, and the floor plates would be less efficient and therefore less marketable; and

WHEREAS, without the height waivers, the floor to ceiling heights would be reduced, diminishing revenue; and

WHEREAS, the recess waivers were deemed necessary by LPC and are required to sustain the overall viability of the project; and

WHEREAS, finally, the bulkhead waiver is necessary to accommodate the bare minimum of building systems that cannot be located in the cellar; and

WHEREAS, nevertheless, at hearing, the Board questioned the need for the additional FAR, and asked the applicant to analyze a scenario that maintained the height and setback waivers, but eliminated the additional FAR; and

WHEREAS, the applicant submitted two different lesser variance scenarios, one that maximized the amount of units in the tower and one that maximized the amount of units in the base; and

WHEREAS, the applicant concluded that neither scenario would realize a reasonable return, and concluded that the FAR waiver was necessary; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA102M, dated June 23, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration, with the condition stipulated below and prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.4, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under Z.R. § 72-21, to permit, on a site partially within a C6-2A zoning district and partially within a C1-6 zoning district, the

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proposed development of a 5.88 Floor Area Ratio (FAR), seven and eleven-story mixed-use retail/community facility/residential building, with ground floor commercial space, a small community facility space, and 36 dwelling units, which is non-complying as to floor area and FAR, lot coverage, rear yard, height and setback, inner court, street wall location and elevator bulkhead requirements, contrary to Z.R. §§ 23-145, 35-31, 35-20 23-47, 35-24, 23-633, 23-851, 33-42, 77-22 and 77-24; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 31, 2006" – seventeen (17) sheets and marked "Received December 11, 2006" - one (1) sheet; and *on further condition*:

THAT the total FAR of the development is limited to 5.88, with a residential FAR of 5.16, a community facility FAR of 0.02, and a commercial FAR of 0.70;

THAT the other bulk parameters of the building shall be as indicated on the BSA-approved plans;

THAT the interior layout and all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2006.

140-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 21-29 Belvidere Realty, LLC, owner.

SUBJECT – Application July 6, 2006 – Special Permit pursuant to Z.R. §73-53 to allow the proposed four-story enlargement of a legal and existing, conforming four-story manufacturing building. The premise is located in an M1-1 zoning district. The proposal is seeking waivers of Z. R. Sections 43-12 (FAR); 43-43 (Wall height, total height, number of stories, setbacks, and sky exposure plane); and 43-26 (Rear yard).

PREMISES AFFECTED – 25-29 Belvidere Street, located on the east side of Belvidere Street between Broadway and Beaver Street, Block 3135, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 23, 2006, acting on Department of Buildings Application No. 301188184, reads:

“The proposed enlargement of a legal conforming manufacturing use located in a M1-1 zoning district is not allowed and requires a special permit from the Board of Standards and Appeals pursuant to Section 73-53 of the Zoning Resolution”; and

WHEREAS, this is an application made pursuant to ZR §§ 73-53 and 73-03, to allow, within an M1-1 zoning district, the proposed enlargement of a legal conforming Use Group 17b manufacturing building, which does not comply with requirements related to floor area, wall height, number of stories, setback, and sky exposure plane, contrary to ZR §§ 43-12 and 43-43; and

WHEREAS, a public hearing was held on this application on November 21, 2006 after due notice by publication in *The City Record* and then to decision on December 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the subject zoning lot is located on the east side of Belvidere Street between Broadway and Beaver Street, within an M1-1 zoning district; and

WHEREAS, the lot is approximately 9,500 square feet and is improved upon with a 18,525.5 square feet, 1.95 Floor Area Ratio (FAR) four-story manufacturing building constructed in 1922; and

WHEREAS, the proposed enlargement will add an additional 8,332.2 square feet in floor area, and will be located adjacent to the existing building, with enclosed parking and loading on the first floor; and

WHEREAS, the enlargement will result in the following non-compliances: an FAR of 2.83 (the maximum FAR is 1.0); a wall height of 48’-2” (the maximum wall height is 30’-0”); four stories (the maximum is two stories); no setbacks (a setback of 20’-0” is required); and non-compliance with the sky exposure plane; and

WHEREAS, the current owner purchased the property in 2000, and has used it since then for the manufacturing of custom decorative hardware; and

WHEREAS, as to the prerequisites, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the use of the premises is not subject to termination pursuant to ZR § 52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use on the site during the past five years; the subject building has not received an enlargement pursuant to ZR §§ 11-412, 43-121 or 72-21; and that the subject use is listed in Use Group 17b, not Use Group 18; and

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WHEREAS, the applicant also demonstrated that the requested proposal is for an enlargement that results in less than 45% of the floor area occupied by the UG 17b use on December 17, 1987, and does not exceed 10,000 square feet; and

WHEREAS, in support of the above, the applicant has submitted plans, an owner's affidavit, Sanborn maps, and a history of the listing in the telephone directory; and

WHEREAS, the applicant represents that the enlargement is an entirely enclosed building, and that there will be no open uses of any kind; and

WHEREAS, the applicant represents, and the Board agrees, that that the requirements set forth at ZR § 73-53(b)(4),(5),(6),(7),(8), and (9) are either satisfied, or are inapplicable to the instant application; and

WHEREAS, the applicant notes that the enlargement will result in the hiring of approximately 5 to 15 new employees, which is below the number which will generate significant increases in vehicular or pedestrian traffic; and

WHEREAS, as to potential parking impacts, the applicant states there will be adequate parking, both on-site and on-street, to accommodate projected parking need; and

WHEREAS, further, all parking and loading will be enclosed; and

WHEREAS, accordingly, the record indicates and the Board finds that the subject enlargement will not generate significant increases in vehicular or pedestrian traffic, nor cause congestion in the surrounding area, and that there is adequate parking for the vehicles generated by the enlargement, and that loading will be inside the building; and WHEREAS, the Board notes that there are no required side yards; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the Board notes that the proposed enlargement will be constructed entirely within the subject M1-1 zoning district; and

WHEREAS, the Board observes that immediately to the north and west of the site are two large warehouses and a factory, and that the subject block is developed with many commercial uses; and

WHEREAS, thus, the neighborhood in which the site is located is characterized by a significant manufacturing and commercial presence; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board notes that the grant of the special permit will facilitate the enlargement of a viable UG 17 use, which provides jobs and tax revenue, on a site where such use is appropriate and legal; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use are outweighed by the advantages to be

derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§ 73-53 and 73-03.

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA001K, dated July 11, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-53 and 73-03 for a special permit to allow, within an M1-1 zoning district, the proposed enlargement of a legal conforming use Group 17b manufacturing building, which does not comply with requirements related to floor area, wall height, number of stories, setback, and sky exposure plane, contrary to ZR §§ 43-12 and 43-43, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received December 11, 2006"-(5) sheets; and *on further condition*;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be no open uses on the site;

THAT the above conditions shall appear on any issued certificate of occupancy;

THAT all applicable fire safety measure will be complied with;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

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DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals December 12, 2006.

175-05-BZ

APPLICANT – Eric Palatnik, P.C. for 18-24 Luquer Street Realty LLC, owner.

SUBJECT – Application July 28, 2005 – Zoning variance pursuant to Z.R. §72-21 to allow the construction of a proposed four (4) story multi-family dwelling containing sixteen (16) dwelling units and eight (8) accessory parking spaces. Project site is located in an M1-1 zoning district and is contrary to Z.R. §42-00.

PREMISES AFFECTED – 18-24 Luquer Street, Between Hicks Street and Columbia Street, Block 520, Lot 13, 16, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for an adjourned hearing.

302-05-BZ

APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.

SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR sections 32-14 (use), 33-121 (FAR), 101-721 and 101-41(b) (street wall height), 101-351 (curb cut), and 35-24 (setback).

PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100' east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to February 6, 2007, at 1:30 P.M., for an adjourned hearing.

128-06-BZ

APPLICANT– Juan D. Reyes III, Esq., for Atlantic Walk, LLC, owner.

SUBJECT – Application June 16, 2006 – Zoning variance pursuant to ZR §72-21 to allow a nine-story residential building in an M1-5 district (Area B-2 of Special Tribeca Mixed Use District). Twenty Six (26) dwelling units and twenty six (26) parking spaces are proposed. The

development would be contrary to use (Z.R. §111-104(d) and §42-10), height and setback (Z.R. §43-43), and floor area ratio regulations (Z.R. §111-104(d) and §43-12). The number of parking spaces exceeds the maximum allowed is contrary to Z.R. §13-12.

PREMISES AFFECTED – 415 Washington Street, west side of Washington Street, corner formed by Vestry Street and Washington Street, Block 218, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Juan Reyes, Joe Lombardi, Greg Boudeci and Peter Host.

For Opposition: Jack Lester and Richard Herschlag, P.E.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for continued hearing.

252-06-BZ

APPLICANT – Randolph Croxton, for Mount Hope Community Center, owner.

SUBJECT – Application September 15, 2006 – Variance pursuant to Z.R. §72-21 to permit the construction of a four-story Use Group 4 community center facility. The premises is located in an R8 zoning district and is currently a vacant lot. The proposal is seeking waivers of Z.R. §24-36 and §24-393 (proposed portion of the new building located in the rear yard is not a permitted obstruction per Z.R. §24-33 (b) paragraph (3)). A waiver of §24-382 is also requested relating to the proposed portion of the new building on a through lot exceeding 110 feet in depth which requires a rear yard equivalent.

PREMISES AFFECTED – 55 East 175th Street, between Townsend Avenue and Walton Avenues, Lot 2850, Lot 38, Borough of The Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Jean Hahn.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for decision, hearing closed.

151-04-BZ

APPLICANT– Philips Nizer, LLP, for Fred M. Schildwachter & Son, Inc., c/o Dan Schildwachter, owner; Adriana A. Salamone, lessee.

SUBJECT – Application April 9, 2004 – Special Permit (§73-36) to permit the legalization of an existing physical culture establishment (Star Fitness) in an M3-1 Zoning District.

PREMISES AFFECTED – 1385 Commerce Avenue, southwest corner of Butler Place, Block 1385, Lot 13, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Phillips Nizer and Keven McGrath.

MINUTES

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to January
23, 2007, at 1:30 P.M., for decision, hearing closed.

378-04-BZ

APPLICANT– Sheldon Lobel, P.C., for Hieronima
Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance
(§72-21) to permit the construction of a four-story residential
building and a four-car garage. The Premise is located on a
vacant lot in an M1-1 zoning district. The proposal is
contrary to Section 42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast
corner of the intersection between Kingsland Avenue and
Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Jose Leon.

ACTION OF THE BOARD – Laid over to February
6, 2007, at 1:30 P.M., for continued hearing.

111-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Alex Lyublinskiy,
owner.

SUBJECT – Application June 5, 2005 – Special Permit (73-
622) for the in-part legalization of an enlargement to a single
family residence. This application seeks to vary open space
and floor area (23-141); side yard (23-48) and perimeter wall
height (23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of
Norfolk Street, between Shore Boulevard and Oriental
Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel and Ed Eisenberg.

For Opposition: Susan Klapper and Mark Fleishchen.

ACTION OF THE BOARD – Laid over to January
30, 2007, at 1:30 P.M., for continued hearing.

115-06-BZ

APPLICANT– Harold Weinberg, for Saul Mazor, owner.

SUBJECT – Application June 7, 2006 – Special Permit (73-
622) for the enlargement of a single family detached
residence. This application seeks to vary open space, floor
area and lot coverage (23-141); side yard (23-461) and rear
yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1820 East 28th Street, west side
140' south of Avenue R, between Avenue R and S, Block
6833, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, Ed Eisenberg and Ed
Nuquez.

For Opposition: Wadih J. Pharaon and Ed Jaworski

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to January
23, 2007, at 1:30 P.M., for decision, hearing closed.

124-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for
Nasanel Gold, owner.

SUBJECT – Application June 13, 2004 – Special Permit
(§73-622) for the enlargement of a single family residence.
This application seeks to vary open space and floor area (§23-
141); side yard (§23-48) and rear yard (§34-47) regulations.
R-2 zoning district.

PREMISES AFFECTED – 1078 East 26th Street, East 26th
Street between Avenue J and Avenue K, Block 7607, Lot 83,
Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 9,
2007, at 1:30 P.M., for decision, hearing closed.

138-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for RH
Realty LLC NY by Ralph Herzka, owner.

SUBJECT – Application July 5, 2006 – Special Permit (§73-
622) for the enlargement of a single family residence. This
application seeks to vary open space and floor area (§23-
141(a)) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3447 Bedford Avenue, between
Avenue M and N, Block 7661, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman, David Shteirman, R.A.,
Herschel Langner and Daniel Weiss.

ACTION OF THE BOARD – Laid over to January
30, 2007, at 1:30 P.M., for continued hearing.

214-06-BZ

APPLICANT– Walter T. Gorman, P.E., for Sidney Esikoff &
Norman Fieber, owners.

SUBJECT – Application August 24, 2006 – Special Permit
(§11-411) for the re-establishment and extension of term for
an existing gasoline service station, which has been in
continuous operation since 1953. R3-2 zoning district.

MINUTES

PREMISES AFFECTED – 196-25 Hillside Avenue,
northwest corner of 197th Street, Block 10509, Lot 265,
Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to January
30, 2007, at 1:30 P.M., for continued hearing.

216-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Leemilt’s Petroleum,
Inc., owner.

SUBJECT – Application August 28, 2006 – Special Permit
(§11-411 and §11-412) for the re-establishment and extension
of term for an existing automotive service station , which has
been in continuous operation since 1961 and legalization of
certain minor amendments to previously approved plans. C1-
4/R6-A zoning district.

PREMISES AFFECTED – 35-17 Junction Boulevard, east
side of Junction Boulevard between 35th and 37th Avenues,
Block 1737, Lot 49, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Joshua Rinesmith.

ACTION OF THE BOARD – Laid over to January
30, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 4:20 P.M.